UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v. Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Plaintiff Chelsea Manning, through counsel, respectfully moves this Court for summary judgment in her favor and responds in opposition to the United States' Motion for Summary Judgment. The Federal Bureau of Investigation (FBI) has failed as a matter of law to meet its burden to justify its complete and categorical withholding of the records responsive to Ms. Manning's 2014 request for information made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Ms. Manning respectfully requests that the Court order the FBI to release those non-exempt portions of the responsive records.

I. INTRODUCTION

Ms. Manning is currently serving a thirty-five-year sentence in the military prison at Fort Leavenworth, Kansas, for disclosing classified and sensitive information to the not-for-profit journalistic organization, Wikileaks, in 2010. *See* Charlie Savage and Emmarie Huetteman, *Manning Sentenced to 35 Years for a Pivotal Leak of U.S. Files*, NEW YORK TIMES (Aug. 21, 2013), http://www.nytimes.com/2013/08/22/us/manning-sentenced-for-leaking-government-secrets.html?_r=0, attached hereto as Ex. 1. Her sentence is the result of a court martial by the U.S. Army and conviction in 2013. *Id.* It was during the course of serving her time that Ms. Manning sought information regarding the FBI's investigation of her role in these same disclosures. *See* Docs. 12-2 and 12-4.

In February 2014, Ms. Manning requested that the FBI provide her with two categories of documents pursuant to FOIA: 1) relating to "the alleged disclosures of classified and sensitive by [sic] unclassified information by then-Private First Class (PFC) Bradley Edward Manning (a.k.a Chelsea Elizabeth Manning);" and 2) "suspected or alleged civilian co-conspirators of the disclosures alleged to have been conducted by Manning." Doc. 12-2. The FBI denied her request in full on the purported ground that the

records were law enforcement records "located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A)." Doc. 12-7 at 2. Exemption (7)(A), however, does not exempt information from disclosure simply by virtue of the fact that the information is located in an investigative file; such "blanket" exemptions are invalid as a matter of law. *Crooker v. Bureau of Alcohol, Tobacco & Firearms,* 789 F.2d 64, 66 (D.C. Cir. 1986) (explaining that amendments to Exemption (7)(A) were meant to eliminate "blanket" exemptions, or exemptions "claimed for all records in a file simply because they are in the file").

Now, the FBI seeks to justify its decision to withhold all records in the relevant investigative file on the basis of a declaration submitted by David M. Hardy, the Section Chief of the FBI's Record/Information Dissemination Section, Records Management Division in Winchester, Virginia. Doc. 12-1, at 1 (Hardy Declaration). Mr. Hardy asserts that all records Ms. Manning is seeking are exempt, in full, as law enforcement records, the disclosure of which would interfere with "with ongoing law enforcement investigations and proceedings." *Id.* ¶ 38. The Declaration makes clear, however, that the FBI has skirted its statutory obligations by creating "functional categories" to include every conceivable document in an investigative file so as to, in practice, create a prohibited "blanket" exemption.

The FBI does not indicate whether Ms. Manning remains a subject of the "ongoing" investigation and similarly does not disclose the identities of any other subjects of the investigation. *See* Hardy Decl. ¶ 34 n.9. However, and to the extent that any of the records concern only Ms. Manning, they cannot be exempt because she *cannot* be the subject of an ongoing investigation or reasonably anticipated prosecution. The prosecution

of Ms. Manning has concluded in an Army court martial, and any subsequent civilian proceeding would violate her protection against double jeopardy under the Fifth Amendment to the Constitution. *United States v. Stoltz*, 720 F.3d 1127, 1128 (9th Cir. 2013) ("It is . . . well settled that a general or special court-martial conviction precludes a subsequent civilian criminal conviction for the same offense.") (*citing Grafton v. United States*, 206 U.S. 333, 345-48 (1907)). The FBI's categorical and complete withholding of records relating to Ms. Manning disregards the temporal nature of Exemption 7(A), which cannot serve to protect records that concern parts of a law enforcement proceeding that have already concluded. *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, 746 F.3d 1082, 1097 (D.C. Cir. 2014). Rather those materials are undoubtedly segregable, at least in part, from whatever portion of the investigation remains ongoing. However, the FBI's declaration fails on its face to demonstrate that it disclosed any segregable material in otherwise exempt documents or categories thereof.

The FBI's failure to provide anything more than vague and conclusory assertions regarding the investigative file involving Ms. Manning and its purported complete non-segregability cannot serve as the basis for summary judgment in its favor.

II. STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

1. In 2010, the United States Army charged Ms. Manning, then known as Private First Class Bradley E. Manning, with various violations of the Uniform Code of Military Justice and the United States Code for allegedly disclosing classified and confidential information to the media organization, WikiLeaks. *U.S. Soldier Charged with Leaking Classified Information*, CNN (Jul. 6, 2010)

http://www.cnn.com/2010/WORLD/meast/07/06/iraq.soldier.leak.charge/, attached hereto as Ex. 2.

2. Ms. Manning pled guilty to some of the charges in February 2013. *Judge Accepts Manning's Guilty Pleas in WikiLeaks Case*, CBS NEWS (Feb. 28, 2013), http://www.cbsnews.com/news/judge-accepts-mannings-guilty-pleas-in-wikileaks-case/, attached hereto as Ex. 3, and proceeded to trial on the remaining charges that summer. Charlie Savage, *Manning is Acquitted of Aiding the Enemy*, New York Times, (Jul. 30, 2013), http://www.nytimes.com/2013/07/31/us/bradley-manning-verdict.html, attached hereto as Ex. 4.

3. At trial Ms. Manning was acquitted of aiding the enemy, but convicted of charges related to espionage, theft, and computer fraud under the United States Code, as well as various other military-related offenses. *Id.*; Manning General Court-Martial Order No. 4 (Apr. 10, 2014), attached hereto as Ex. 5 (listing findings regarding each of the charges against Ms. Manning).

4. In August 2013, a military judge sentenced her to thirty-five years of imprisonment and a dishonorable discharge from the Army. Richard A. Serrano, WikiLeaks Trial: Bradley Manning Sentenced to 35 Years in Prison, LOS ANGELES TIMES (AUG. 21, 2013), http://articles.latimes.com/2013/aug/21/nation/la-na-nn-wikileaks-bradley-manning-sentenced-20130820, attached hereto as Ex. 6. She is currently serving her sentence at the Fort Leavenworth Disciplinary Barracks in Fort Leavenworth, Kansas.

5. The conduct that formed the basis of Ms. Manning's conviction and sentence also formed the basis of the FBI's criminal investigation. *See* Hardy Decl. ¶ 37 (describing the

"ongoing investigation into the unauthorized disclosure of classified information that subsequently was published on the WikiLeaks website.").

6. On February 20, 2014, Ms. Manning submitted a FOIA request to the FBI seeking:

> a. Documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to investigation conduction by the Washington Field Office of the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into the alleged disclosures of classified and sensitive but unclassified information by Private First Class (PFC) Bradley E. Manning beginning in late 2010 and continuing until an unknown date, but as late as mid-2012.
>
> b. Any other documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to the investigation conducted by the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into alleged civilian co-conspirators of the disclosures of information by Manning.

Doc. 12-2.

7. On March 7, 2014, the FBI acknowledged Ms. Manning's request and notified her that the request "did not contain sufficient information to conduct an accurate search of the Central Records System." Doc. 12-3 at 2.

8. On March 18, 2014, Ms. Manning supplemented her request with the additional information and modified her request so that it read:

> a. Documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to investigation conduction by the Washington Field Office (WFO), the Department of Justice Counterepionage [sic] Section (CES), the U.S. Attorney's Office of the Eastern District of Virginia (E.D.Va.) into the alleged disclosures of classified and sensitive by [sic] unclassified information by then-Private First Class (PFC) Bradley Edward Manning (a.k.a Chelsea Elizabeth Manning).
>
> b. Any other documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to the investigation conducted by the Federal Bureau of Investigation and

> other agencies into suspected or alleged civilian co-conspirators of the disclosures alleged to have been conducted by Manning.

Doc. 12-4 at 3.

9. On April 8, 2014, the FBI performed a search only for the records identified in part (a) of Ms. Manning's request and used search terms that included a "six-way phonetic breakdown" of her name, her date and place of birth, Ms. Manning's description of the investigation, and the file number Ms. Manning provided. Hardy Decl. ¶ 30.

10. The FBI did not conduct a second search "for records responsive to the second part" of Ms. Manning's request because the FBI was aware, based on experience from a separate case, that those records "were maintained in the same files" as those records concerning Ms. Manning. *Id.* at ¶ 32.

11. The FBI located "potentially responsive" records to Ms. Manning's request. *Id.* ¶ 30. However, the FBI does not indicate the number of located records.

12. On the same day that it searched for records responsive to Ms. Manning's request, April 8, 2014, the FBI uniformly and categorically denied Ms. Manning's request. Doc. 12-7; *see also* Doc. 12 at 4. The FBI justified its categorical denial by explaining that the "material [Plaintiff] requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A)." Doc. 12-7 at 2; *see also* Hardy Decl. ¶ 11.

13. Although the FBI has not provided any evidence regarding the nature of its "segregability review," the agency purports to have "determined that there is no reasonably segregable information, including public source materials, which can be released at this time without adversely affecting the investigation and any resulting prosecutions." Hardy Decl. ¶ 49.

14. Ms. Manning appealed the agency's denial of her request for records to the Department of Justice (DOJ) Office of Information Policy (OIP). *See* Doc. 12-10 at 2. On May 7, 2014, the OIP acknowledged receipt of her appeal. *Id.*

15. On August 7, 2014, the OIP affirmed and reiterated the FBI's categorical denial of Ms. Manning's request for records and denied her appeal, reasoning that the:

> FBI properly withheld this information *in full* because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Doc. 12-12 at 2 (emphasis added).

16. On January 5, 2015, Ms. Manning sought the assistance of the Office of Government Information Services (OGIS) and asked the agency to "mediate and resolve the dispute between [Plaintiff] and the Attorney General regarding [Plaintiff's] Freedom of Information Act (FOIA) 5 U.S.C. § 552) [sic] request[.]" Doc. 12-13.

17. The OGIS responded to Ms. Manning's request for mediation by repeating the FBI's categorical and purported grounds for denial of her request and stating that "Exemption 7(A) [was] still applicable to records sought at the time of the appeal." Doc. 12-15 at 3.

III. ARGUMENT

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), *aff'd*, 425 U.S. 352). The Act therefore requires that federal agencies make their records available to the public for copying and inspection. 5 U.S.C. § 552. And "[a]lthough

Congress enumerated nine exemptions from the disclosure requirement, these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Am. Civil Liberties Union v. U.S. Dep't of Justice*, 655 F.3d 1, 5 (D.C. Cir. 2011) (quoting *Nat'l Ass'n of Home Builders v. Norton,* 309 F.3d 26, 32 (D.C. Cir. 2002) (internal quotation marks omitted)). Consequently, and "[a]t all times[,] courts must bear in mind that FOIA mandates a strong presumption in favor of disclosure." *Id.* (quoting *Nat'l Ass'n of Home Builders v. Norton,* 309 F.3d 26, 32) (internal quotation mark omitted) (second alteration in original); *see also* Exec. Order No. E9-1773, 74 Fed. Reg. 15 (Jan. 26, 2009) ("All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."). The Supreme Court has "often noted the Act's goal of broad disclosure and insisted that the exemptions be given a narrow compass." *Milner v. Dep't of the Navy*, 562 U.S. 562, 571 (2011) (internal quotation marks omitted); *see also FBI v. Abramson,* 456 U.S. 615, 630 (1982) ("FOIA exemptions are to be narrowly construed."). In this case, however, the FBI has operated from a presumption of blanket nondisclosure, purportedly justified by 5 U.S.C. § 552(b)(7)(A), and attempted to retroactively defend its position. *See* Hardy Decl. ¶ 44 (explaining that "[w]hen the FBI receives a request for records about a pending investigation, it commonly asserts FOIA Exemption 7(A) to protect the pending investigation and/or any related prospective investigations and prosecutions.").

Pursuant to FOIA's underlying policy, the "agency withholding responsive documents from a FOIA release bears the burden of proving the applicability of claimed

exemptions." *Am. Civil Liberties Union v. U.S. Dep't of Defense*, 628 F.3d 612, 619 (D.C. Cir. 2011). Upon a showing that requested records are exempt, the agency must still affirmatively demonstrate that it has disclosed "[a]ny reasonably segregable portion of a record" to "any person requesting such record after deletion of the portions which are exempt" from disclosure. 5 U.S.C. § 552(b).

The agency can meet its burden through "agency affidavits if they contain reasonable specificity of detail rather than merely conclusory statements, and if they are not called into question by contradictory evidence in the record or by evidence of agency bad faith." *Consumer Fed'n of Am. v. Dep't of Agric.*, 455 F.3d 283, 287 (D.C. Cir. 2006) (quoting *Gallant v. NLRB,* 26 F.3d 168, 171 (D.C. Cir. 1994)). "The government cannot satisfy its burden with affidavits that are vague or conclusory, or merely parrot the statutory standard." *Tipograph v. Dep't of Justice*, 83 F. Supp. 3d 234, 238 (D.D.C. 2015). "Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.' " *Judicial Watch, Inc. v. U.S. Dep't of Def.*, 715 F.3d 937, 941 (D.C. Cir. 2013) (quoting *Am. Civil Liberties Union,* 628 F.3d at 619). And while the Court affords those declarations substantial weight, it reviews the agency decisions *de novo*. *Wolf v. C.I.A.*, 473 F.3d 370, 374 (D.C. Cir. 2007). As discussed below, the FBI's declaration is both vague and conclusory and consequently fails to justify the agency's actions.

a. The FBI has failed to meet its burden to justify its complete and categorical withholding of records.

The FBI, through the Hardy Declaration, fails to meet its burden for two reasons. First, the Declaration does not demonstrate that *the entirety* of the requested records "relat[e] to a concrete prospective law enforcement proceeding," as required to justify its

nondisclosure. *Juarez v. Dep't of Justice*, 518 F.3d 54, 58 (D.C. Cir. 2008) (quoting *Bevis v. Dep't of State,* 801 F.2d 1386, 1389 (D.C. Cir. 1986)). *No* law enforcement proceeding can be related to Ms. Manning, because she has already been prosecuted for the conduct that forms the basis of the government's investigative file. Hardy Decl. ¶ 39 (describing the inception of the investigation of the "unauthorized disclosure of classified information that was published on the WikiLeaks website"); *see also* Manning General Court-Martial Order No. 4 (Ex. 5) (describing the charges against Ms. Manning arising out of her disclosures to WikiLeaks); *see also Stoltz*, 720 F.3d at 1128 (a court martial conviction precludes subsequent civilian prosecution of same offense).

Second, the FBI has failed to articulate why or how it reached the conclusion that the responsive records contain "no segregable, non-exempt portions that may be released to Manning." Def. Motion at 15. As a consequence, the FBI has failed to provide the Court with the evidence necessary to determine whether any segregable materials exist.

b. FBI Declaration Fails to demonstrate that the Responsive Records Relate to a Concrete Prospective Law Enforcement Proceeding, as required by § 552(b)(7)(A).

Exemption (7)(A) exempts from compelled disclosure those "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information [] could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The government may not rely on this exemption to shield a document from disclosure simply because it is in an investigative file. *Campbell v. Dep't of Health & Human Servs.*, 682 F.2d 256, 263 (D.C. Cir. 1982) (an agency is not authorized "to refuse to disclose any record compiled in anticipation of enforcement action merely because the record has

found its way into an investigative file."). Such "blanket" exemptions are invalid as a matter of law. *Crooker,* 789 F.2d at 66. Similarly, "FBI records are not law enforcement records [under FOIA] simply by virtue of the function that the FBI serves." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 229 (D.C. Cir. 1987) (quoting *Vymetalik v. F.B.I.*, 785 F.2d 1090, 1095 (D.C. Cir. 1986) (alteration in original)).

Instead, the agency must demonstrate both that the records were "compiled for law enforcement purpose," and that the public disclosure of those records "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 522(b)(7)(A). "To justify withholding, the DOJ must therefore demonstrate that disclosure (1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated." *Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1096 (quoting *Mapother v. Dep't of Justice,* 3 F.3d 1533, 1540 (D.C. Cir. 1993) (internal quotation marks omitted)); *see also Juarez,* 518 F.3d at 58 (the withheld records must relate to "a concrete prospective law enforcement proceeding"). By definition, the disclosure of records "cannot interfere with parts of the enforcement proceeding already concluded." *North v. Walsh*, 881 F.2d 1088, 1100 (D.C. Cir. 1989).

i. The FBI's use of "Functional Categories" creates a constructive, and impermissible, blanket exemption.

Even if the records "could be withheld under one of the FOIA exemptions," the FBI still has a "duty to identify responsive documents, claim the relevant exemptions" and "explain its reasoning for withholding the documents in its affidavit." *Morley v. C.I.A.*, 508 F.3d 1108, 1120 (D.C. Cir. 2007). Although agencies generally comply with this duty through a "*Vaughn* index," *see Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), a "categorical approach to redactions or withholdings is permissible under FOIA when the

FOIA litigation process threatens to reveal the very information the agency hopes to protect." *Prison Legal News v. Samuels*, 787 F.3d 1142, 1149 (D.C. Cir. 2015) (quoting *Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1088) (internal quotation marks omitted)). Such is the approach the FBI chose in the present case. Hardy Decl. ¶ 42.

Although the use of functional categories is sometimes permitted, or even encouraged, "[t]here are limits [] to when categorical rules may be employed." *Nation Magazine, Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 893 (D.C. Cir. 1995). The D.C. Circuit has held that, if an agency

> wishes to adopt the generic approach, [an agency] has a three-fold task. First, it must define its categories functionally. Second, it must conduct a document-by-document review in order to assign documents to the proper category. Finally, it must explain to the court how the release of each category would interfere with enforcement proceedings.

Citizens for Responsibility & Ethics in Washington, 746 F.3d at 1098 (quoting *Bevis*, 801 F.2d at 1389-90 (alteration in original)). It is not enough for the agency "to simply assert that disclosure will interfere with enforcement proceedings; 'it must rather demonstrate *how* disclosure' will do so." *Id.* (quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007)). "Only when the range of circumstances included in the category characteristically support[s] an inference that the statutory requirements for exemption are satisfied is such a rule appropriate." *Nation Magazine, Washington Bureau*, 71 F.3d at 893 (quoting *United States v. Landano,* 508 U.S. 165, 176-80 (1993) (internal quotation marks omitted) (second alteration in original)). The FBI's claimed exempt documents, which are broken into categories to include every type of record in an investigatory file, including administrative and perfunctory documents, is no more than an impermissible "blanket"

exemption.[1] *See Crooker*, 789 F.2d at 66 (reiterating the prohibition against the "blanket exemption" and the "mandate[e]" that agencies are to "focus upon records, not files.") (quoting *Campbell,* 682 F.2d at 262).

To justify the withholding of records on the basis that their disclosure "could reasonably be expected to interfere with enforcement proceedings," 5 U.S.C. § 522(b)(7)(A), the FBI must prove that the records "relat[e] to a concrete prospective law enforcement proceeding." *Juarez*, 518 F.3d at 58 (quoting *Bevis,* 801 F.2d at 1389). "In the typical case[,] the requested records relate to a specific individual or entity that is the subject of the ongoing investigation, making the likelihood of interference readily apparent." *Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1098. Here, however, the FBI does not indicate the subject or subjects of its apparently ongoing investigation and similarly does not indicate whether Ms. Manning herself *remains* a subject of the investigation. *See* Hardy Decl. ¶ 34 n.9. In this case, not only is the likelihood of interference not "readily apparent," but such an inference cannot be drawn on the basis of the Hardy Declaration. *See Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1099.

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[1] The Hardy Declaration identifies the following categories and subcategories: "EC" documents; FBI Letters; FD-302 Interview Forms; FD-542 Investigative Accomplishment Forms; FD-794 Payment Requests; memoranda; E-mails; Letterhead Memoranda ("LHM"); FBI Records Checks; FBI Investigative Reports; FBI Computer Printouts; FBI Investigative Inserts; Other Investigative Documents; Miscellaneous Administrative Documents, to include storage envelopes, transmittal forms, routing slips, FD-5A (Automated Serial Permanent Charge-Out), notes, letters, memoranda, telegrams, other attachments. Hardy Decl. ¶ 43. It goes on to list Evidentiary/Investigative Materials, including the Exchange of Information Between FBI and Other Law Enforcement Agencies; Documentary Evidence/Information Concerning Documentary Evidence, *id.* ¶46, and then finally describes Administrative Materials, including Reporting Communications, and Miscellaneous Administrative Documents, *id.* ¶ 47, and Administrative Instructions. *Id.* ¶ 48. This exhaustive list of categories does little more than to identify every possible record that could be included in an investigative file.

ii. Because Ms. Manning has already been tried and convicted by the U.S. Army, there can be no pending or prospective law enforcement proceedings her.

Among the relevant facts the FBI failed to include in its statement of undisputed facts is that Ms. Manning has not only already been investigated by the United States for her alleged role in the disclosures that form the basis of the FBI's investigation, but she has also been *prosecuted and convicted* by the U.S. Army for her role in those disclosures. Doc. 12-16 (omitting information of Ms. Manning's military conviction); *see also* Manning General Court-Martial Order No. 4 (Ex. 5); *see also* Savage, *Manning is Acquitted of Aiding the Enemy* (Ex. 7).

Because the Army general court-martial and the FBI investigation arose from the same conduct, any attempt to prosecute Ms. Manning in federal criminal court would violate her double jeopardy rights. *See Stoltz*, 720 F.3d at 1128 (a court-martial conviction "precludes a subsequent civilian criminal conviction for the same offense."); *United States v. Walking Crow*, 560 F.2d 386, 388 (8th Cir. 1977) ("Nor can a person be prosecuted in a federal territorial court after he has been prosecuted for the same crime in a federal military court."); *see also United States v. Easton*, 71 M.J. 168, 170 (C.A.A.F. 2012) ("the protection against double jeopardy under the Fifth Amendment applies in the military context"). Therefore, and although the Hardy Declaration does not illuminate the subject of the FBI's investigation, Ms. Manning *cannot* be the subject of the FBI's investigation for any *prospective* law enforcement proceeding.[2]

[2] Ms. Manning was already tried and convicted at a court-martial of violating every conceivable federal offense arising from the disclosure, including 18 U.S.C. § 793 (espionage) 18 U.S.C. § 1030(a)(1) (hacking), and 18 U.S.C. § 641 (theft of government property). The United States could not possibly charge Ms. Manning with any other crime. In short, the prosecution of Ms. Manning is over.

As a consequence, to the extent that any materials *pertaining only to Ms. Manning* might have, at one time prior to her military judgment, been exempt under Section (b)(7)(a), that is no longer so. *See Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1097 ("Exemption 7(A) is temporal in nature" and an agency's reliance on the exemption "may become outdated when the proceeding at issue comes to a close."). That Ms. Manning is currently serving her sentence for the conduct that forms of the basis of the FBI's investigation demonstrates the essence of Exemption (7)(A)'s "temporal" nature.

iii. The Court Cannot Infer, on the Basis of the FBI's Vague Declaration, that Materials Relating only to Ms. Manning would interfere with any other "Resulting Prosecutions."

The Court cannot, on the basis of the FBI's Declaration, draw the conclusion that the withheld records are connected to, or would interfere with, the investigation of others, apart from Ms. Manning. *See Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1099. The D.C. Circuit recently considered and rejected the FBI's complete and categorical nondisclosure under similar circumstances to those here in *Citizens for Responsibility & Ethics in Washington*, 746 F.3d 1082. In that case, Citizens for Responsibility and Ethics in Washington (CREW) requested the FBI's records relating to the investigation of former House Speaker Tom Delay. *Id.* at 118. The FBI had investigated the former Speaker in a public corruption investigation centered on Jack Abramoff and some of the Speaker's top aides. *Id.* CREW made its request after it became clear that the FBI would not bring criminal charges against Delay. *Id.* The FBI, however, categorically and completely withheld the records responsive to CREW's request on the

basis that they were exempt law enforcement records under 5 U.S.C. § 552(b)(7)(A), among other grounds. *Id.*

Through a declaration by David Hardy, the FBI asserted that, in the context of a "wide-ranging" public corruption investigation, "the release of the requested records could disclose to individuals under investigation the identities of potential witnesses, the content of the government's evidence and trial strategy and the focus of the investigation." *Id.* at 1099. The court, however, rejected the FBI's justification on the ground that the records related to Delay, who had already been told he would not be charged and was therefore not under investigation. *Id.* at 1099. The court then considered the FBI's assertion that the release of the requested records would interfere with "all related criminal prosecutions," *see id.*, and held that "assuming some individuals do remain under investigation, the relevant question is whether any of the responsive records, which are primarily about Delay, would disclose anything relevant to the investigation of *those* individuals." *Id.* (emphasis in original). The Court held that "without more information about the degree of overlap," it could not "say that the circumstances characteristically support an inference that disclosure would interfere with any pending enforcement proceeding." *Id.* (quoting *Nation Magazine, Washington Bureau*, 71 F.3d at 893 (internal quotation marks omitted)). The circuit court held that the "DOJ [had] not met its burden to warrant categorical withholding" and reversed the district court's summary judgment ruling. *Citizens for Responsibility & Ethics in Washington*, 746 F.3d at 1099 and 1101.

The same conclusion applies to the present case. Most importantly, just as Speaker Delay was *not* subject to investigation or prosecution at the time of the FBI's claimed exemption, neither can Ms. Manning presently be under investigation or the subject of

prospective prosecution because she was already subject to an Army court martial and convicted. And just as in *Citizens for Responsibility & Ethics in Washington*, in which the responsive records related to Delay, in this case the FBI *only searched* for records including Ms. Manning's name, birthdate, or other identifier. Hardy Decl. ¶¶ 30-33. The FBI did not search for records related to other individuals who may have been involved in the disclosures. *See id.* Similarly, just as the FBI in *Citizens for Responsibility & Ethics in Washington*, did not identify the *subject* of any prospective proceedings and instead asserted that the disclosure of the Delay materials would interfere with "related criminal prosecutions," in this case the FBI has used similarly vague justifications that disclosure would interfere with "any resulting prosecutions." *See* Hardy Decl. at ¶¶ 34, 41, 44, 46(a), 46(c), 47(b), 49; *see also id.* ¶ 34 n.9 ("FBI has acknowledged that it is investigating whether anyone else was involved with plaintiff in the unauthorized disclosures of classified information made to WikiLeaks, the FBI has not and is not confirming or denying whether it is investigating any particular person."). Again, the FBI is attempting to skirt FOIA by acting exactly as it did in *Citizens for Responsibility & Ethics in Washington*. Such vague descriptors of potential or eventual prosecutions cannot justify the FBI's categorical withholding of records *relating to Ms. Manning*.

It is for this same reason – that Ms. Manning sought records relating to the FBI's investigation *of her* – that the DOJ's reliance on *Elec. Privacy Info. Ctr. v. Dep't of Justice Criminal Div.*, 82 F. Supp. 3d 307 (D.D.C. 2015) (*hereinafter "EPIC"*), fails. Throughout its brief and in the Hardy Declaration, the FBI argues that the documents relating to the "WikiLeaks investigation" are exempt under subpart (7)(A) and appears to argue that those are the same documents at issue here. *See* Def. Motion at 7, 11, 16. However, *EPIC*

did not hold that *all* documents pertaining to the investigation of Wikileaks are exempt and is distinguishable on the basis of the records requested. There, the Electronic Privacy Information Center (EPIC) sought

> 1. All records regarding any individuals targeted for surveillance for support for or interest in WikiLeaks;
>
> 2. All records regarding lists of names of individuals who have demonstrated support for or interest in WikiLeaks;
>
> 3. All records of any agency communications with Internet and social media companies including, but not limited to Facebook and Google, regarding lists of individuals who have demonstrated, through advocacy or other means, support for or interest in WikiLeaks; and
>
> 4. All records of any agency communications with financial services companies including, but not limited to Visa, MasterCard, and PayPal, regarding lists of individuals who have demonstrated, through monetary donations or other means, support or interest in WikiLeaks.

Id. at 312. EPIC *did not* request records pertaining to Ms. Manning specifically; instead it sought records it believed would show that the FBI was targeting Wikileaks' supporters. *See id.* Those are not the records sought here and may very well be exempt for reasons irrelevant to the case at hand. *EPIC* in no way held that every record in any investigative file relating to Wikileaks or Chelsea Manning is exempt from disclosure, as Defendants repeatedly imply. *See* Def. Motion at 7, 9, 11.

c. The FBI has failed to meet its burden that it disclosed any reasonably segregable material.

The FBI's use of functional categories in its affidavit does not relieve the agency of its obligation to "release 'any reasonably segregable portions' of responsive documents once [it has] redacted the exempted information." *Barnard v. Dep't of Homeland Sec.*, 598 F. Supp. 2d 1, 25 (D.D.C. 2009) (quoting 5 U.S.C. § 552(b)); *see also Long v. U.S. Dep't of Justice*, 450 F. Supp. 2d 42, 76 (D.D.C.), *order amended on reconsideration,* 457 F.

Supp. 2d 30 (D.D.C. 2006), *amended,* 479 F. Supp. 2d 23 (D.D.C. 2007) (the agency "bears the burden of reviewing plaintiffs' requests, identifying either specific documents or functional categories of information that are exempt from disclosure, and disclosing any reasonably segregable, non-exempt portion of the requested materials."). "It has long been the rule in this Circuit that non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." *Wilderness Soc. v. Dep't of the Interior,* 344 F. Supp. 2d 1, 18 (D.D.C. 2004) (quoting *Mead Data Cent., Inc. v. Dep't of the Air Force,* 566 F.2d 242, 260 (D.C. Cir. 1977)). The FBI has neither disclosed such portions nor demonstrated that it analyzed the records to even identify them.

This statutory requirement "is of such great import that this Court has an affirmative duty to engage in its own segregability analysis, regardless of Plaintiff's pleadings." *Id.* The Court is similarly subject to reversal in the absence of entering a finding on segregability. *Juarez*, 518 F.3d at 60 ("Under this Circuit's law, the district court's failure to address segregability in its memorandum opinion is reversible error."). Defendants' conclusory declaration of non-segregability, however, does not enable the Court to enter its mandatory finding and requires a denial of Defendants' motion. *See Mead Data Cent., Inc.,* 566 F.2d at 261; *see also Elec. Privacy Info. Ctr. v. Dep't of Justice*, 511 F. Supp. 2d 56, 73 (D.D.C. 2007) (denying the defendant summary judgment where its "failure to provide *meaningful representations* regarding segregability as to documents withheld pursuant to Exemptions 2, 6, 7(A), 7(C), 7(d) and 7(E) – for which redaction, rather than withholding, is typically the appropriate approach – is particularly glaring.") (emphasis added). The evidence and common sense mandate summary judgment in favor of Ms. Manning.

i. The FBI fails to establish that it conducted *any* segregability review; that any such review occurred is implausible.

In general, compliance with the Act's segregability mandate takes the form of redaction. However, in this case, Defendants have not redacted any material and instead have refused to disclose *any* document or portion thereof out of the entire investigatory file. *See Blanton v. U.S. Dep't of Justice*, 182 F. Supp. 2d 81, 87 (D.D.C. 2002) ("To withhold the entirety of a document, the agency must demonstrate that it cannot segregate the exempt material from the non-exempt and disclose as much as possible."). The FBI addresses the issue of segregability only twice and in conclusory terms. It provides neither the Court nor Ms. Manning with any meaningful representations regarding its segregability analysis. Mr. Hardy's Declaration makes the generalized assertion that, although the FBI "commonly asserts FOIA Exemption 7(A) to protect the pending investigation and/or any related prospective investigations and prosecutions," it "[n]onetheless [] reviews the records to identify and release any reasonably segregable information contained in the responsive file(s) that would not jeopardize ongoing or future enforcement proceedings." Hardy Decl. ¶ 44. It makes no representation regarding what the FBI did *in this case*, except to state its conclusion that "there is no reasonably segregable information, including public source material, which can be released at this time without adversely affecting the investigation and any resulting prosecutions." *Id.* ¶ 49. The Declaration provides no factual support regarding who analyzed the records to identify segregable portions or how that person performed the analysis. *See id.* Such conclusory assertions are insufficient to sustain the FBI's burden. *See Senate of Puerto Rico v. Dep't of Justice,* 823 F.2d 574, 585 (D.C. Cir. 1987) ("[W]here no factual support

is provided for an essential element of the claimed privilege or shield, the label 'conclusory' is surely apt.").[3]

That the FBI conducted *any* segregability analysis is hardly plausible as the FBI apparently conducted its search for records *on the same day* that it notified Ms. Manning that the records responsive to her request were completely and categorically exempt from disclosure. *See* Hardy Decl. ¶ 30 (explaining that the FBI conducted its Central Records System search on April 8, 2014); *see also* Doc. 12-7 (the FBI's April 8, 2014, letter informing Ms. Manning that the records responsive to her request were law enforcement records "located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A)). Such a timeframe does not allow for document-by-document or line-by-line review of records for segregable portions, as required by law. *See, e.g.*, *Concepcion v. U.S. Customs & Border Prot.*, 907 F. Supp. 2d 133, 144 (D.D.C. 2012), *aff'd sub nom. Concepcion v. U.S. Bureau of Customs & Border Prot.*, 550 F. App'x 1 (D.C. Cir. 2013) (holding that an agency met its segregability burden when the declarant testified that she had conducted a line-by-line review of the documents within each

[3] It defies logic to believe that the FBI file does not contain information that was already publicly disclosed during Ms. Manning's court martial. Every aspect of the trial was well publicized. *See, e.g.*, Transcripts from Chelsea Manning's Trial, THE FREEDOM OF THE PRESS FOUNDATION, https://freedom.press/chelsea-manning-transcripts (last accessed Apr. 28, 2016) (making transcripts of the trial public in PDF format). Ms. Manning is at a loss to understand what information could be so *sensitive* that it warrants categorically exempting every document in the government's possession, particularly when Ms. Manning has already been tried and convicted and the media covered every day of the trial and sentencing. The FBI alludes to the fact that its file includes public source material, but states that it is not "available for release because any such disclosure at this point would adversely affect the FBI's pending investigation." Hardy Decl. ¶ 34. Such public source material cannot "interfere" with pending or prospective proceedings. Rather "[s]uch information likely having been disclosed and made part of the public record, it is impossible to see how its disclosure by way of a FOIA request would have any different effect than did its earlier disclosure during litigation." *Johnson*, 118 F. Supp. 3d at 795-96.

category). Absent any evidence that *any person* conducted *any analysis*, the necessary conclusion is that no such analysis occurred, or, indeed, could have occurred, given that the Agency completed its search and categorical denial within the same day.

ii. The FBI conflates the functional category analysis with the segregability analysis.

Similarly, in its brief, the government argued only that the FBI determined that the materials responsive to Ms. Manning's request are "exempt in [their] entirety under Exemption 7(A)," and that, "[a]s a result, there are no segregable, non-exempt portions that may be released to Manning." Def. Motion at 15. This circular reasoning is insufficient as a matter of law to meet the government's burden of demonstrating that *no* materials are segregable. This "blanket assertion of non-segregability is contrary to the case law requiring that defendants indicate for each document 'which portions of the document are disclosable and which are allegedly exempt.'" *Gray v. U.S. Army Criminal Investigation Command*, 742 F. Supp. 2d 68, 76 (D.D.C. 2010) (quoting *Defenders of Wildlife v. U.S. Border Patrol,* 623 F. Supp. 2d 83, 90 (D.D.C. 2009))

By stating in conclusory terms that the FBI determined the functional categories of materials and that the materials were therefore exempt in their entirety and nonsegregable, the FBI fatally conflates the 7(A) analysis with the segregability analysis. *See Lawyers' Comm. for Civil Rights of San Francisco Bay Area v. U.S. Dep't of the Treasury*, No. C 07-2590 PJH, 2008 WL 4482855, at *14 (N.D. Cal. Sept. 30, 2008) (*Lawyers*). In *Lawyers*, a California civil rights group sought records related to the U.S. Treasury's Specially Designated Nationals List, a list "of suspected terrorists, drug traffickers, and other 'specially designated nationals[.]'" *Id.* at *2. For its part, the U.S. Treasury asserted that the responsive records "should be withheld in their entirety" under Exemptions 7(A)

and 7(F) and identified functional categories in its affidavit justifying its nondisclosure. *Id.* at *14. Upon so doing, the declarant for the Treasury simply asserted that the Treasury "determined that there was no reasonably segregable information that could be released." *Id.* Nowhere in the declaration did the declarant "*explain[]* why segregation [was] not possible," and instead, with regard to Exemption 7(A), the Treasury "confus[ed] the issue of segregability with the categorical application of the exemption." *Id.* (emphasis in original). The court rejected the Treasury's attempt to apply *only* the categorical analysis to justify, not only a category of records, but also every portion of the documents therein. *Id.*

The court held that

> the inquiry regarding the segregability of exempt and non-exempt material within the documents themselves is not the same as the inquiry regarding whether a class of documents may be withheld. In other words, this court could determine that exemption 7(A) applied categorically to a class of documents, e.g., the delisting petitions, but Treasury would still be required to demonstrate that the "reasonably segregable portions" of the documents within that class of documents had been produced. *See, e.g.*, [*Pacific Fisheries Inc. v. United States,* 593 F.3d 1143, 1148-49 (9th Cir. 2008)]. Treasury further confuses the type of showing that an agency is generally required to make in order to withhold documents under exemption 7(A) with the issue of segregability.

Id. Such a conflation of concepts cannot support the agency's duty to "provide a reasonably detailed justification rather than conclusory statements to support its claim that the non-exempt material in a document is not reasonably segregable." *Mead Data Cent., Inc.,* 566 F.2d at 261; *see also, e.g.*, *Gray*, 742 F. Supp. 2d at 76 (holding that the agency's statement that "[a]ll records were compiled in the course of an ongoing investigation and disciplinary action," and that "[t]herefore none of the materials were segregable," constituted a "blanket assertion" and "failed to establish that there are no segregable portions of the withheld documents."); *see also Goldstein v. Treasury Inspector Gen. for*

Tax Admin., No. 14-CV-02189 (APM), 2016 WL 1180158, at *9 (D.D.C. Mar. 25, 2016) (rejecting an agency declaration as the basis for summary judgment where it "largely parrot[ed] the elements of [the claimed exemption] and stat[ed] without "detailed justification" but rather in "conclusory" fashion that no responsive documents are segregable).

The FBI applies precisely the same flawed analysis as the Treasury in *Lawyers*. It argues only that the responsive records are "exempt in [their] entirety under Exemption 7(A)," and that, "[a]s a result, there are no segregable, non-exempt portions that may be released." Def. Motion at 15. However, as explained in *Lawyers*, that a *category* is exempt does not mean that there are no "segregable portions" of documents within that category. *Id.* at *14. And like the Treasury in *Lawyers*, the FBI has failed to demonstrate that it conducted a segregability analysis that was *separate* from its assignment of functional categories, to identify and disclose those non-exempt portions. *See* Hardy Decl. ¶ 49 (stating only that the agency "carefully review[ed] the responsive records" to determine that they are "part of and related to a pending investigation" and that they include "no reasonably segregable information[.]").

Rather than merely assert that it has identified exempt categories, and that therefore no segregable materials exists, as the FBI did in this case, the withholding agencies must demonstrate that, *in fact*, they conducted a separate segregability analysis *for each document* within those categories. *See, e.g.*, *Concepcion*, 907 F. Supp. 2d at 144 (holding that an agency met its segregability burden when the declarant testified that she had conducted a line-by-line review of the documents within each category); *Barnard v. Dep't of Homeland Sec.*, 598 F. Supp. 2d 1, 25 (D.D.C. 2009) (same); *see also, e.g.*, *Gavin*

v. U.S. S.E.C., No. 04-4522 (PAM/JSM), 2005 WL 2739293, at *4-5 (D. Minn. Oct. 24, 2005) (denying the defendant's motion for summary judgment and holding that, although the defendant agency "is entitled to withhold documents utilizing the categorical approach[,] the record fails to assure the Court that the SEC conducted a document-by-document review for categorization purposes."); *see also Gutman v. U.S. Dep't of Justice*, 238 F. Supp. 2d 284, 296 (D.D.C. 2003) (approving the agency's segregability analysis where it "evaluated each page of every document for segregability and, after making the necessary deletions or excisions, released them accordingly"). Ms. Manning, as the "party requesting information is helpless to counter an agency's contention that there is no segregable material within the documents requested that may be disclosed." *Conway v. U.S. Internal Revenue Serv.*, 447 F. Supp. 1128, 1134 (D.D.C. 1978). It is for that reason "the burden is on the agency to justify its non-segregability claim." *Id.* The FBI's assertion that it "carefully reviewed the responsive records," Hardy Decl. ¶ 49, is insufficient as a matter of law to meet its burden.[4]

III. CONCLUSION

For the reasons stated above, the FBI has failed to meet its burden under FOIA both in regard to Exemption 7(a) and segregability. It has failed to demonstrate how, insofar as responsive records pertain only to Ms. Manning, they can be a part of any ongoing investigation. Instead, they cannot be, as she has already been tried for the subject

[4] The FBI has had ample opportunity to conduct a segregability analysis. This Court should resist any effort by the FBI to draw out these proceedings by conducting this review at this late stage. From the moment it received Ms. Manning's FOIA request the FBI had no intention of turning over any records – not even a single document or portion thereof. The most efficient way to resolve this case now, and in a manner that promotes the purposes of FOIA and the interests of justice, is for the Court to order the immediate disclosure of non-exempt materials to Ms. Manning on a rolling basis.

conduct. Nor has the FBI met its burden to demonstrate that it has analyzed the responsive documents, one at a time, and disclosed the non-exempt and reasonably segregable portions. For those reasons, the FBI's Motion must be denied. Similarly, because the protections of Exemption 7(a) cannot apply to information that pertains only to Ms. Manning, summary judgment for Ms. Manning is warranted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on the 29th day of April, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Nancy Hollander
Nancy Hollander

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v.

Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 1

The New York Times | http://nyti.ms/14j3KQC

U.S.

Manning Sentenced to 35 Years for a Pivotal Leak of U.S. Files

By CHARLIE SAVAGE and EMMARIE HUETTEMAN AUG. 21, 2013

FORT MEADE, Md. — A military judge sentenced Pfc. Bradley Manning on Wednesday to 35 years in prison for providing more than 700,000 government files to WikiLeaks, a gigantic leak that lifted the veil on American military and diplomatic activities around the world.

The sentence is the longest ever handed down in a case involving a leak of United States government information for the purpose of having the information reported to the public. Private Manning, 25, will be eligible for parole in about seven years, his lawyer said.

In a two-minute hearing on Wednesday morning, the judge, Col. Denise R. Lind of the Army, also said that Private Manning would be dishonorably discharged and reduced in rank from private first class to private, the lowest rank in the military. She said he would forfeit his pay, but she did not impose a fine.

Before the sentencing, Private Manning sat leaning forward with his hands folded, whispering to his lawyer, David Coombs. His aunt and two cousins sat quietly behind him. As Colonel Lind read the sentence, Private Manning stood, showing no expression. He did not make a statement.

The materials that Private Manning gave to WikiLeaks included a video taken during an American helicopter attack in Baghdad in 2007 in which civilians were killed, including two journalists. He also gave WikiLeaks some 250,000 diplomatic cables, dossiers of detainees being imprisoned without trial at Guantánamo Bay, Cuba, and hundreds of thousands of incident reports from the wars in Iraq and Afghanistan.

Immediately after the judge left, military guards flanked Private Manning and hustled him out the front of the courtroom as a half-dozen supporters in the back of the courtroom called out words of encouragement.

“We’ll keep fighting for you, Bradley,” one shouted. Another said, “You are a hero.”

Mr. Coombs later told reporters that he would apply for a presidential pardon next week and read a statement from Private Manning that he said would be included in his request.

“I only wanted to help people,” Private Manning’s statement said, adding, “If you deny my request for a pardon, I will serve my time knowing that sometimes you have to pay a heavy price to live in a free society.”

A White House spokesman said a request would be considered “like any other application.”

Mr. Coombs also said that he had wept after they left the courtroom and that Private Manning told him, “It’s O.K.”

Private Manning downloaded the materials from a classified computer network to which he had access as a low-level Army intelligence analyst while deployed in Iraq in 2010. The documents he gave to WikiLeaks set off a scramble inside the government as officials sought to minimize any harm, including protecting foreigners identified in some documents as having helped American diplomats or the military. No evidence emerged that anyone was killed because of the leaks.

Among other things, the files also exposed the abuse of detainees by Iraqi officers under the watch of American forces and showed that civilian deaths during the Iraq war were most likely significantly higher than official estimates.

"It's outrageous," one supporter who had been in the courtroom, Laura Watkins, 63, of Alexandria, Va., said of the sentence. "What I've seen is a travesty of justice."

The judge's decision to impose a 35-year sentence roughly split the difference between what the prosecution had requested — 60 years — and the 20 years that Private Manning had exposed himself to before the trial began when he pleaded guilty to a lesser version of the charges he was facing.

Under the military system, convicts sentenced to more than three decades in prison are eligible for parole after 10 years, and Private Manning is receiving 1,294 days credit — a little more than three years — for time in custody and for a 112-day period in which the judge ruled he was mistreated during pretrial confinement. He is expected to serve his time at the Army prison at Fort Leavenworth, Kan.

There have been only a handful of previous convictions in cases involving leak accusations, none resulting in a comparably severe sentence.

In 1985, for example, a former Navy intelligence officer, Samuel Morison, was sentenced to two years for giving classified satellite surveillance photographs to Jane's Defense Weekly, making him the first government employee imprisoned for giving classified information to the press. In 2001, President Bill Clinton pardoned him.

As part of a surge in leak-related prosecutions under the Obama administration, Shamai Leibowitz, a former Federal Bureau of Investigation linguist, was sentenced to 20 months; Thomas Drake, a former National Security Agency official, was sentenced to a year of probation and community service; and John Kiriakou, a former Central Intelligence Agency official, received a 30-month sentence.

Steven Aftergood, a government secrecy specialist with the Federation of American Scientists, said Private Manning's 35-year sentence reflected how much

his case — involving leaks of entire archives, not singular documents or discrete pieces of information — differed from what had come before it.

"It reflects the gravity of the case and the government's perception of the damage that was done," Mr. Aftergood said. "Among other things, it is also the most voluminous leak ever, and also the broadest in scope including diplomatic, military and other records. So it was a qualitatively new kind of leak, and the government responded aggressively."

Colonel Lind could have sentenced Private Manning to up to 90 years. She found him guilty last month of most of the charges against him, including six counts of violating the Espionage Act, but acquitted him of the most serious charge, aiding the enemy, which had never before been filed in a leak case. Private Manning's sentence must be reviewed by the so-called convening authority, a general who oversees the Military District of Washington and has the power to reduce the term but not add to it. The case will then automatically come before the Army Court of Criminal Appeals.

In seeking a 60-year sentence, prosecutors argued that Private Manning had betrayed the trust of the government and said they hoped a severe punishment would discourage future leaks. They also had asked the judge to impose a fine of $100,000 to repay some of what was spent on efforts to mitigate damage, including identifying individuals who officials said had been put at risk by the disclosures.

Mr. Coombs argued that Private Manning had leaked the files because he wanted to start a public debate and bring about change, portraying his client as a well-intentioned, if naïve, whistle-blower.

But Mr. Coombs, seeking leniency, also argued that his client was confused at the time by stresses, including a crisis over his gender identity while in a combat zone. He elicited testimony showing that the military played down serious and recurring signs that Private Manning's mental health was deteriorating, allowing him to maintain his access to classified information.

Correction: August 21, 2013

An earlier version of this article misidentified a person sitting behind Pfc. Bradley Manning at his sentencing. It was a cousin of Private Manning, not a sister.

A version of this article appears in print on August 22, 2013, on page A1 of the New York edition with the headline: Manning Sentenced to 35 Years For a Pivotal Leak of U.S. Files.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v. Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 2

U.S. soldier charged with leaking classified information

By the CNN Wire Staff
July 6, 2010 1:19 p.m. EDT

U.S. Apache attack video

STORY HIGHLIGHTS

- Pfc. Bradley Manning detained in Kuwait
- Manning faces several charges of illegally transferring classified information
- He is believed to be the soldier who leaked video of Apache attack
- Attack killed two Reuters journalists, drew global attention

Baghdad, Iraq (CNN) -- The U.S. military has charged a soldier in Iraq who is suspected of leaking a helicopter attack video that shows civilian deaths, the Pentagon said Tuesday.

Pfc. Bradley E. Manning, 22, of Potomac, Maryland, is being detained in Kuwait and faces charges on eight violations of the U.S. Criminal Code for allegedly illegally transferring classified data, according to a charge sheet released by the military.

It accuses Manning of "wrongfully introducing a classified video of a military operation filmed at or near Baghdad, Iraq, on or about 12 July 2007, onto his personal computer, a non-secure information system."

The footage shows an Apache helicopter gunship attack that killed a dozen civilians, including two journalists from the Reuters news service. Their deaths gained the incident international notoriety.

Reuters photographer Saeed Cmagh survived an initial strafing by the Apache gunship's 30 mm machine gun, but he apparently died when the gunship opened fire on people attempting to get him off the sidewalk where he lay, according to the video.

The aerial footage was posted in April by the Web site WikiLeaks, which said the video remains classified and "clearly shows the unprovoked slaying of a wounded Reuters employee and his rescuers."

WikiLeaks is a site that publishes anonymously submitted documents, video and other sensitive materials.

The military said it detained Manning, a U.S. Army intelligence analyst deployed with the 10th Mountain Division's 2nd Brigade, in June. The website Wired.com identified Manning as the one who had leaked the video of the helicopter assault.

Wired.com reported that Manning confessed to the leak in a series of online chats with a former computer hacker. He allegedly owned up to leaking other items to WikiLeaks, including the classified Army document assessing the threat level of the website, as well as State Department cables, according to the article.

Public airing of the video forced the Pentagon to defend the actions of its troops in a report that concluded the Apache crew had no way of knowing the Reuters journalists were among suspected insurgents on the street.

Pentagon documents on the investigation

The military said Tuesday that it will appoint an officer to preside over Manning's Article 32 investigation, which is similar to a civilian grand jury hearing. The military will then decide whether Manning should be court-martialed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v. Case No. 1:15-cv-01654-APM

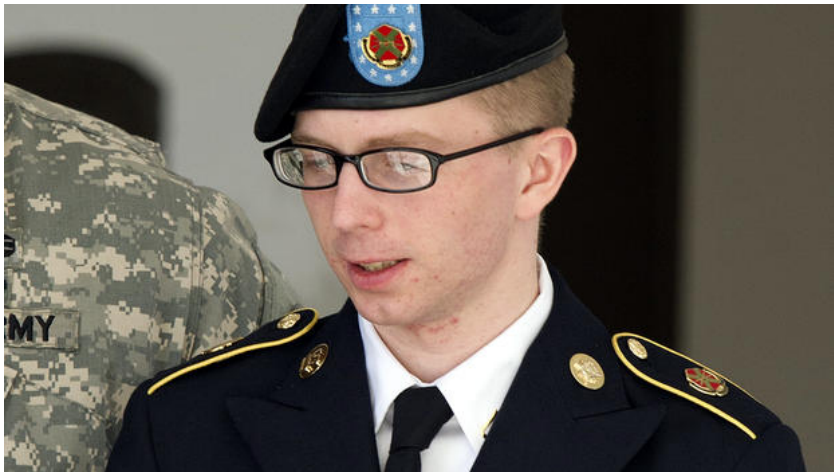
U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 3

CBS/AP / *February 28, 2013, 5:44 PM*

Judge accepts Manning's guilty pleas in WikiLeaks case



Pfc. Bradley Manning is escorted by military police as he departs the courtroom at Fort Meade, Md., April 25, 2012. / **AFP/GETTY IMAGES**

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Updated at 5:52 p.m. ET

FORT MEADE, MD. | A U.S. Army judge has accepted an offer by a private to plead guilty to violating military regulations in the biggest leak of classified material in U.S. history.

Pfc. Bradley Manning admits to sending hundreds of thousands of Iraq and Afghanistan battlefield reports, State Department diplomatic cables and other files to WikiLeaks while working as an intelligence analyst in Baghdad.

An Army judge accepted the pleas to 10 charges at a hearing Thursday. Manning could face a maximum of 20 years on those charges alone.

Prosecutors say they plan to move forward with an additional 12 charges against him, including aiding the enemy. That charge could carry a life sentence.

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Earlier, Manning offered to plead guilty Thursday, saying he spilled the secrets to expose the American military's "bloodlust" in Iraq and Afghanistan.

It was the first time Manning directly admitted leaking the material to the anti-secrecy website WikiLeaks and detailed the frustrations that led him to do it.

Sitting before a military judge, the slightly built 25-year-old soldier from Oklahoma read from a 35-page statement through his wire-rimmed glasses for more than an hour. He spoke quickly and evenly, showing little emotion even when he described how troubled he was by what he had seen.

"I believed that if the general public, especially the American public, had access to the information ... this could spark a domestic debate on the role of the military and our foreign policy in general," Manning said.

13 **PHOTOS**

WikiLeaks suspect Bradley Manning

Retired Lt. Col. Jeffrey Addicott, a former Army lawyer, told CBS Radio News that the defense's move was "pretty gutsy."

"Basically they're saying that they're willing to plead guilty to some of the offenses, recognizing that he understands the gravity of what he did, which will of course have an effect on himself on the mercy of the panel of the jury in terms of the sentencing process," said Addicott. "But he's not pleading guilty to everything, so he's kind of splitting the baby."

Manning said he didn't think the information would harm the U.S. and he decided to release it because he was disturbed by the conduct of the wars in Afghanistan and Iraq and the seeming disregard by American troops for the lives of ordinary people.

"I felt we were risking so much for people who seemed unwilling to cooperate with us, leading to frustration and hatred on both sides," he said. "I began to become depressed at the situation we found ourselves mired in year after year. In attempting counterinsurgency operations, we became obsessed with capturing and killing human targets on lists."

He added: "I wanted the public to know that not everyone living in Iraq were targets to be neutralized."

Manning admitted sending hundreds of thousands of Iraq and Afghanistan battlefield reports, State Department diplomatic cables, other classified records and two battlefield video clips to WikiLeaks in 2009 and 2010 while working as an intelligence analyst in Baghdad.

The battlefield reports were the first documents Manning decided to leak. He said he sent them to WikiLeaks after contacting The Washington Post and The New York Times. He said he felt a reporter at the Post didn't take him seriously, and a message he left for news tips at the Times was not returned.

In a statement, WikiLeaks founder Julian Assange, holed up in the Ecuadorean Embassy in London to avoid extradition to Sweden to face sex-related charges, called the Times "cowards."

"The only safe way to get these cowards to publish anything is to get WikiLeaks to publish it first," Assange said.

Manning said he was appalled by a 2007 combat video of an aerial assault by a U.S. helicopter that killed 11 men, including a Reuters news photographer and his driver. The Pentagon concluded the troops mistook the camera equipment for weapons.

"The most alarming aspect of the video to me was the seemingly delightful bloodlust the aerial weapons team happened to have," Manning said, adding that

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Dead Body Found In Conference Room At Apple HQ


Shocking Video Of A Plane Struck By Lightning


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play **VIDEO**

Comedy duo Key & Peele talk new movie "Keanu"

the soldiers' actions "seemed similar to a child torturing ants with a magnifying glass."

As for the sensitive State Department cables, he said they "documented backdoor deals and criminality that didn't reflect the so-called leader of the free world."

"I thought these cables were a prime example of the need for a more open diplomacy," Manning said. "I believed that these cables would not damage the United States. However, I believed these cables would be embarrassing."

Manning said when he was on leave, he visited his boyfriend in the Boston area and said he asked him hypothetical questions about how to go about sharing the information he had. He said his boyfriend didn't really understand what he was talking about and that their relationship grew distant.

Manning's sexual orientation discussed in court

The Obama administration has said releasing the information threatened valuable military and diplomatic sources and strained America's relations with other governments. The administration has aggressively pursued individuals accused of leaking classified material, and Manning's is the highest-profile case.

Manning has been embraced by some left-leaning activists as a whistle-blowing hero whose actions exposed war crimes and helped trigger the Middle Eastern pro-democracy uprisings known as the Arab Spring in 2010.

In his statement, Assange called Manning "America's foremost political prisoner."

"Today's events confirm that," said Assange. "Both the U.N. and the U.S. military have formally found him to have been mistreated. All those involved in the persecution of Bradley Manning will find cause to reflect on their actions."

WikiLeaks did not immediately return a text message for comment on Manning's statement. The group has been careful never to confirm or deny whether he was the source of the documents it has posted online.

On its Twitter feed Thursday, WikiLeaks called Manning an "alleged source" and noted that he was detailing "what he says" were his dealings with the online organization.

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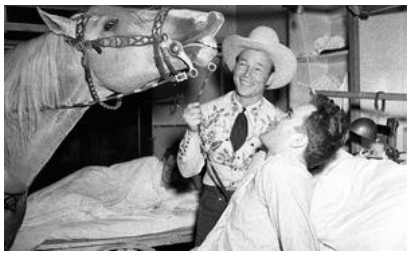

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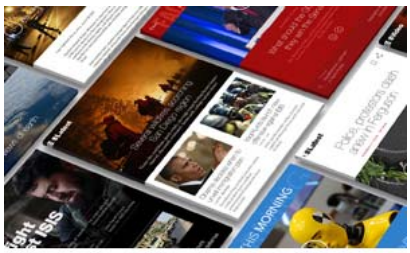

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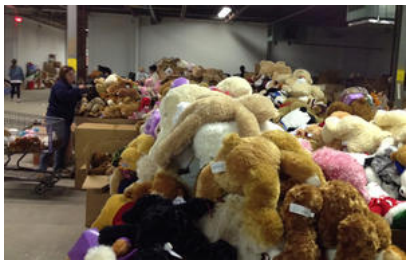

When disaster relief brings anything but relief

Humanitarian workers say the good intentions of generous Americans who donate useless goods instead of money to victims creates a "second disaster"

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v.

Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 4

The New York Times | http://nyti.ms/13s0Sg1

U.S.

Manning Is Acquitted of Aiding the Enemy

By CHARLIE SAVAGE JULY 30, 2013

FORT MEADE, Md. — A military judge on Tuesday found Pfc. Bradley Manning not guilty of "aiding the enemy" for his release of hundreds of thousands of military and diplomatic documents to WikiLeaks for publication on the Internet, rejecting the government's unprecedented effort to bring such a charge in a leak case.

But the judge in the court-martial, Col. Denise R. Lind, convicted Private Manning of six counts of violating the Espionage Act of 1917 and most of the other crimes he was charged with. He faces a theoretical maximum sentence of 136 years in prison, although legal experts said the actual term was likely to be much shorter.

While advocates of open government celebrated his acquittal on the most serious charge, the case still appears destined to stand as a fierce warning to any government employee who is tempted to make public vast numbers of secret documents. Private Manning's actions lifted a veil on American military and diplomatic activities around the world, and engendered a broad debate over what information should become public, how the government treats leakers, and what happens to those who see themselves as whistle-blowers.

"We always hate to see a government employee who was trying to publicize wrongdoing convicted of a crime, but this case was unusual from the start because of

the scope of his release," said Gregg Leslie of the Reporters Committee for Freedom of the Press, adding, "Whistle-blowers always know they are taking risks, and the more they reveal the bigger the threat is against them."

Colonel Lind said she would issue findings later that would explain her ruling on each of the charges. But she appeared to reject the government's theory that an employee who gives information about national security matters to an organization that publishes it online for the world to see is guilty of aiding the enemy.

The premise of that theory is that the world includes not just ordinary people who might engage in socially valuable debate, but also enemies like Al Qaeda. Critics have said that it is not clear how giving information to WikiLeaks is different for legal purposes from giving it to traditional news organizations that publish online.

Yochai Benkler, a Harvard law professor who testified in Private Manning's defense, praised the judge for making an "extremely important decision" that he portrayed as denying "the prosecution's effort to launch the most dangerous assault on investigative journalism and the free press in the area of national security that we have seen in decades."

But, he said, the decades of imprisonment that Private Manning could face "is still too high a price for any democracy to demand of its whistle-blowers."

The sentencing phase will begin on Wednesday, with more than 20 witnesses scheduled to appear for both the prosecution and the defense. It could last for weeks; there are no sentencing guidelines or minimum sentences in the military justice system. Private Manning's appeals could go on for years, legal experts said.

Eugene R. Fidell, who teaches military law at Yale Law School, said Private Manning would not be sentenced to anywhere near the 136-year maximum because Colonel Lind was likely to collapse some charges so he did not "get punished twice for the same underlying conduct."

The case has arisen amid a crackdown by the Obama administration on leaks and a debate about government secrecy. Private Manning is one of seven people to

be charged in connection with leaking to the news media during the Obama administration; during all previous administrations, there were three.

The Justice Department recently won an appeals court ruling forcing James Risen, a reporter for The New York Times and an author, to testify in the criminal trial of a former intelligence official accused of being his source. And it has used aggressive tactics in secretly subpoenaing communications records of reporters for Fox News and The Associated Press.

Most reporters watched the proceedings from a closed-circuit feed in a filing center. One who was inside the small courtroom said that Private Manning, 25, appeared relaxed when he entered the room. But as the hour drew near he grew more stoic, and he showed no emotion as he stood while Colonel Lind marched through the litany of charges.

The “aiding the enemy” charge was the first in the list, and she said “not guilty.” But she quickly moved into a long list of guilty findings for the bulk of the remaining charges, including six counts of violating the Espionage Act, five of stealing government property, and one violation of the Computer Fraud and Abuse Act. Each carries up to a 10-year sentence.

Colonel Lind accepted Private Manning’s guilty pleas on two lesser counts, one of which involved leaking a video of an American helicopter attack in Baghdad. She also found him not guilty of leaking in 2009 a video of an airstrike in Afghanistan; he had admitted leaking it, but said he did so later than the time in the charge.

Steven Aftergood, the director of the project on government secrecy for the Federation of American Scientists, called Private Manning’s many other convictions “a weighty verdict that the prosecution would count as a win,” but he argued that the “larger significance of the case” for open government may be limited, since most leakers do not disclose entire databases.

Months before the trial, Private Manning confessed to being WikiLeaks’ source for videos of airstrikes in which civilians were killed; incident reports from the Afghanistan and Iraq wars; dossiers on detainees at Guantánamo Bay, Cuba; and about 250,000 diplomatic cables.

Private Manning also pleaded guilty to a lesser version of the charges against him, although that was not part of any bargain with prosecutors. The move was unusual, and it appeared aimed at trying to persuade the judge to view Private Manning as having taken responsibility for his actions, while recasting the trial as a test of whether the government had brought excessive charges in the case.

The government elected to press forward with trying to convict Private Manning of the more serious charges. Prosecutors portrayed him as an “anarchist” and a “traitor” who recklessly endangered lives out of a desire to “make a splash.” The defense portrayed him as a young, naïve, but good-intentioned humanist who wanted to prompt debate and change.

Hours before the verdict, about two dozen supporters of Private Manning gathered at the main gate to Fort Meade displaying signs with messages like “whistle-blowers keep us honest.” After the verdict, his supporters announced a protest rally Tuesday in front of the White House.

But Representatives Mike Rogers of Michigan and C. A. Dutch Ruppersberger of Maryland, the top Republican and Democrat on the House Intelligence Committee, praised the verdict.

“Justice has been served today,” they said in a statement. “Pfc. Manning harmed our national security, violated the public’s trust, and now stands convicted of multiple serious crimes.”

A version of this article appears in print on July 31, 2013, on page A1 of the New York edition with the headline: Manning Found Not Guilty of Aiding the Enemy.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v.

Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 5

DNA processing required. 10 U.S.C. 1565

DEPARTMENT OF THE ARMY
U.S. Army Military District of Washington
Fort Lesley J. McNair, District of Columbia 20319-5031

GENERAL COURT-MARTIAL ORDER
NUMBER 4

10 April 2014

Private First Class Bradley E. Manning, 445-98-9504, U.S. Army, Headquarters and Headquarters Company, U.S. Army Garrison, Joint Base Myer-Henderson Hall, Fort Myer, Virginia, 22211, was arraigned at on the following offenses at a General Court-Martial convened by the Commander, Headquarters, United States Army Military District of Washington.

Charge I: Article 104. Plea: Not Guilty. Finding: Not Guilty.

The Specification: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 1 November 2009 and on or about 27 May 2010, without proper authority, knowingly give intelligence to the enemy, through indirect means. Plea: Not Guilty. Finding: Not Guilty.

Charge II: Article 134. Plea: Not Guilty. Finding: Guilty.

Specification 1: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 1 November 2009 and on or about 27 May 2010, wrongfully and wantonly cause to be published on the internet intelligence belonging to the United States government, having knowledge that intelligence published on the internet is accessible to the enemy, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Guilty.

Specification 2: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 15 February 2010 and on or about 5 April 2010, having unauthorized possession of information relating to the national defense, to wit: a video file named "12 JUL 07 CZ ENGAGEMENT ZONE 30 GC Anyone.avi", with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except words and figures "15 February 2010" and "5 April 2010", substituting therefor the words and figures, "14 February 2010" and "21 February 2010"; further excepting the words, "information relating to the national defense, to wit:"; further excepting the words, "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words, "did willfully communicate"; further excepting the words and figures, "in violation of 18 U.S. Code Section

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

793(e)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty, except words and figures "15 February 2010" and "5 April 2010", substituting therefor the words and figures "14 February 2010" and "21 February 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures, "in violation of 18 U.S. Code Section 793(e)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Specification 3: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 22 March 2010 and on or about 26 March 2010, having unauthorized possession of information relating to the national defense, to wit: more than one classified memorandum produced by a United States government intelligence agency, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except words and figures "22 March 2010" and "26 March 2010", substituting therefor the words and figures "17 March 2010" and "22 March 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code Section 793(e)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty, except the words and figures "22 March 2010", substituting therefor the words and figures "17 March 2010". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Specification 4: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 31 December 2009 and on or about 5 January 2010, steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Combined Information Data Network Exchange Iraq database containing more than 380,000 records belonging to the United States government, of a value of more than $1,000, in violation of 18 U.S. Code Section 641, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty.

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[After pleas but before findings, the Military Judge granted a motion by the Government Counsel to amend the specification, excepting the words "to wit:" and substituting therefor the words "to wit: a portion of".] Finding: Guilty.

Specification 5: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 31 December 2009 and on or about 9 February 2010, having unauthorized possession of information relating to the national defense, to wit: more than twenty classified records from the Combined Information Data Network Exchange Iraq database, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. [After arraignment but before pleas, the Military Judge granted a motion by the Government Counsel to amend the charge, adding the words, "and at or near Rockville, Maryland," after the word "Iraq".] Plea: Guilty, except the words and figures "31 December 2009" and "9 February 2010", substituting therefor the words and figures "5 January 2010" and "3 February 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words, "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code Section 793(e),". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 6: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 31 December 2009 and on or about 8 January 2010, steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Combined Information Data Network Exchange Afghanistan database containing more than 90,000 records belonging to the United States government, of a value of more than $1,000, in violation of 18 U.S. Code Section 641, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty. [After pleas but before findings, the Military Judge granted a motion by the Government Counsel to amend the specification excepting the words, "to wit:" and substituting therefor the words, "to wit: a portion of".] Finding: Guilty.

Specification 7: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 31 December 2009 and on or about 9 February 2010, having unauthorized possession of information relating to the national defense, to wit: more than twenty classified records from the Combined Information Data Network Exchange Afghanistan database, with reason to believe such information could be used

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

o the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. [After arraignment but before pleas, the Military Judge granted a motion by the Government Counsel to amend the charge, adding the words, "and at or near Rockville, Maryland," after the word "Iraq".] Plea: Guilty, except the words and figures, "31 December 2009" and "9 February 2010", substituting the words and figures "5 January 2010" and "3 February 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code 793(e),". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 8: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 8 March 2010, steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: a United States Southern Command database containing more than 700 records belonging to the United States government, of a value of more than $1,000, in violation of 18 U.S. Code Section 641, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Guilty.

Specification 9: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 8 March 2010 and on or about 27 May 2010, having unauthorized possession of information relating to the national defense, to wit: more than three classified records from a United States Southern Command database, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except the words and figures, "between on or about 8 March 2010 and on or about 27 May 2010", substituting therefor the words and figures "on or about 8 March 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code 793(e)".

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 10: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 11 April 2010 and on or about 27 May 2010, having unauthorized possession of information relating to the national defense, to wit: more than five classified records relating to a military operation in Farah Province, Afghanistan occurring on or about 4 May 2009, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except the words and figures, "11 April 2010" and "27 May 2010", substituting therefor the words and figures "10 April 2010" and "12 April 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code Section 793(e)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 11: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 1 November 2009 and on or about 8 January 2010, having unauthorized possession of information relating to the national defense, to wit: a file named "BE22 PAX.zip" containing a video named "BE22 PAX.wmv", with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Not Guilty.

Specification 12: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 28 March 2010 and on or about 4 May 2010, steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Department of State Net-Centric Diplomacy database containing more than 250,000 records belonging to the United States government, of a value of more than $1,000, in violation of 18 U.S. Code Section 641, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Guilty.

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

Specification 13: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 28 March 2010 and on or about 27 May 2010, having knowingly exceeded authorized access on a Secret Internet Protocol Router Network computer, and by means of such conduct having obtained information that has been determined by the United States government pursuant to an Executive Order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, to wit: more than seventy-five classified United States Department of State cables, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted the said information, to a person not entitled to receive it, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except the words and figures "27 May 2010", substituting therefor the words and figures "4 May 2010"; further excepting the words "knowingly exceeded authorized access", substituting therefor the words "knowingly accessed"; further excepting the words "with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 14: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 15 February 2010 and on or about 18 February 2010, having knowingly exceeded authorized access on a Secret Internet Protocol Router Network computer, and by means of such conduct having obtained information that has been determined by the United States government pursuant to an Executive Order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, to wit: a classified Department of State cable titled "Reykjavik-13", willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted the said information, to a person not entitled to receive it, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except the words and figures, "15 February 2010" and "18 February 2010", substituting therefor the words and figures "14 February 2010" and "15 February 2010"; further excepting the words "knowingly exceeded authorized access", substituting therefor the words "knowingly accessed"; further excepting the words "with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty, except the words and figures, "15 February 2010" and "18 February 2010", substituting therefor the words and figures "14 February 2010" and "15 February 2010"; further excepting the words "knowingly exceeded authorized access", substituting therefor the words "knowingly accessed"; further excepting the

words "with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1)". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Specification 15: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 15 February 2010 and on or about 15 March 2010, having unauthorized possession of information relating to the national defense, to wit: a classified record produced by a United States Army intelligence organization, dated 18 March 2008, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the said information, to a person not entitled to receive it, in violation of 18 U.S. Code Section 793(e), such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. Plea: Guilty, except the words and figures, "between on or about 15 February 2010 and on or about 15 March 2010", substituting therefor the words and figures "on or about 8 March 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefor the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code Section 793(e),". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty.

Specification 16: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 11 May 2010 and on or about 27 May 2010, steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the United States Forces - Iraq Microsoft Outlook I SharePoint Exchange Server global address list belonging to the United States government, of a value of more than $1,000, in violation of 18 U.S. Code Section 641, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces. [After please but before findings, the Military Judge granted a motion by the Government Counsel to amend the specification, excepting the words, "to wit:" and substituting therefor the words, "to wit: a portion of".] Plea: Not Guilty. Finding: Guilty.

Charge III: Article 92. Plea: Guilty. Finding: Guilty.

Specification 1: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 1 November 2009 and on or about 8 March 2010, violate a lawful general regulation, to wit: paragraph 4-5(a)(4), Army

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

Regulation 25-2, dated 24 October 2007, by attempting to bypass network or information system security mechanisms. Plea: Not Guilty. Finding: Guilty.

Specification 2: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 11 February 2010 and on or about 3 April 2010, violate a lawful general regulation, to wit: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007, by adding unauthorized software to a Secret Internet Protocol Router Network computer. Plea: Not Guilty. Finding: Guilty.

Specification 3: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 4 May 2010, violate a lawful general regulation, to wit: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007, by adding unauthorized software to a Secret Internet Protocol Router Network computer. Plea: Not Guilty. Finding: Guilty.

Specification 4: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 11 May 2010 and on or about 27 May 2010, violate a lawful general regulation, to wit: paragraph 4-5(a)(3), Army Regulation 25-2, dated 24 October 2007, by using an information system in a manner other than its intended purpose. Plea: Not Guilty. Finding: Guilty.

Specification 5: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on divers occasions between on or about 1 November 2009 and on or about 27 May 2010, violate a lawful general regulation, to wit: paragraph 7-4, Army Regulation 380-5, dated 29 September 2000, by wrongfully storing classified information. Plea: Guilty, except the words and figures, "1 November 2009", substituting therefor the words and figures, "8 January 2010". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty. Finding: Guilty, except the words and figures, "1 November 2009", substituting therefor the words and figures, "8 January 2010". Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

SENTENCE

Sentence was adjudged on 21 August 2013: To forfeit all pay and allowances; to be reduced to Private, E-1; to be confined for 35 years; and to be dishonorably discharged from the service.

ACTION

The sentence is approved and except for that portion of the sentence pertaining to a Dishonorable Discharge, will be executed. The accused will be credited with 1293 days of confinement against the sentence to confinement.

GCMO No. 4, DA, USAMDW, Fort Lesley J. McNair, DC 20319-5031, dated 10 April 2014 (Continued)

BY COMMAND OF MAJOR GENERAL JEFFREY S. BUCHANAN:

ALAN WEHBÉ
MAJ, JA
Acting Chief, Military Justice

DISTRIBUTION:
1-Accused
1-MJ (COL Lind)
1-TC (MAJ Fein)
1-DC (MAJ Hurley)
1-CDR, Headquarters and Headquarters Company, U.S. Army, Fort Myer, Virginia 22211
1-CDR, Headquarters Command Battalion, Fort Myer, Virginia 22211
2-CDR, HQ, USAMDW, ATTN: SJA, Fort Myer, Virginia 22211
1-CDR, MDW, ATTN: Command Security Manager, Fort Lesley J. McNair, DC 20319-5013
1-PSC, ATTN: FSO, Military Pay Section, Fort Myer, VA 22211
1-PSC, ATTN: Record Sections, Fort Myer, VA 22211 (for compliance with AR 600-8-104, Chapter 6)
1-SAIC, Washington District CID Officer, Fort Myer, VA 22211
1-HQ, U.S. Army Criminal Investigation Command, Russell Knox Building, 27130 Telegraph Road, Quantico, VA 22134-2253
1-HQ, Department of the Army, Office of the Provost Marshal General, ATTN: MP Division Operations, 2800 Army Pentagon, Washington, DC 20310-2800
1-Army Corrections Command (DAPM-ACC), 150 Army Pentagon, Washington, DC 20310-0150
1-Cdr, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249
10-Clerk of Court, JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060-5546
2-Department of Veterans Affairs, Regional Office and Insurance Center, 5000 Wissahickon Ave., Philadelphia, PA 19101
1-U.S. Army Criminal Investigation Laboratory, CODIS Lab, 4930 N. 31st St, Forest Park, GA \ 30297-5205
1-Cdr, United States Disciplinary Barracks, 1301 North Warehouse Road, Fort Leavenworth, KS 66027
2-Department of Veterans Affairs, Regional Office and Insurance Center, 5000 Wissahickon Avenue, Post Office Box 8079, Philadelphia, PA 19101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v.

Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Exhibit 6

WikiLeaks trial: Bradley Manning sentenced to 35 years in prison

August 21, 2013 | By Richard A. Serrano

FT. MEADE, Md. -- A military judge on Wednesday sentenced Army Pfc. Bradley Manning to 35 years in prison, ending a summer-long court-martial in which he was convicted of espionage for leaking a vast trove of classified U.S. military and diplomatic materials to the anti-secrecy group WikiLeaks in 2010.

Army Col. Denise Lind, who delivered the sentence, found Manning guilty last month of six counts of violating the Espionage Act and mishandling classified material, but she acquitted him of a more serious charge of aiding the enemy.

Supporters have hailed Manning as a whistle-blower for revealing government secrets and exposing alleged misdeeds in the wars in Iraq and Afghanistan. They staged a vigil outside Ft. Meade, where the court-martial was held, and planned to organize an evening rally outside the White House.

Manning faced a maximum sentence of 90 years in prison, but in the final phase of the trial, prosecutors urged the judge to sentence him to 60 years behind bars.

PHOTOS: Famous leakers in history

Manning's lawyers asked the judge to show leniency, suggesting a 25-year term, after he apologized to the court and said he hadn't intended to hurt anyone.

Manning, 25, likely will be moved to the Army's central prison in Ft. Leavenworth, Kan. In the months ahead, his attorneys plan to file appeals against his conviction and petition for his release.

In addition, Maj. Gen. Jeffrey S. Buchanan, who heads the Military District of Washington D.C., must approve the judge's findings in the case. He can reduce the conviction and the sentence, but he can't increase them.

Military prosecutors, who had sought a life sentence for Manning when the court-martial began on June 3, argued that Manning knew the leaked classified material would end up on the Internet and be made accessible to Al Qaeda and other terror organizations. Indeed, some of the data was found on computers recovered from Osama bin Laden's hideout in Pakistan after he was killed in May 2011.

They said Manning's decision to release more than 700,000 war logs, terror detainee assessments, State Department cables and other materials to Wikileaks harmed U.S. security and put people's lives at risk. Some of the documents identified informants who had helped U.S. forces.

Defense lawyers said Manning was deeply troubled by materials he saw while serving as an Army intelligence analyst in Iraq in 2010, and that he wanted to warn the public about abuses in the wars in Iraq and Afghanistan.

After Manning was convicted, however, his lawyers sought leniency from the judge by saying he suffered from "gender identity disorder" and other personal problems that should have made him unfit for military service.

PHOTOS: 2013's memorable political moments

ALSO:

Jury could soon have Fort Hood shooting case

Tsarnaev's wounds details in court documents

Keystone XL project could harm wildlife, Interior Dept. says

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v. Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE AND STATEMENT OF GENUINE ISSUES

Plaintiff Chelsea Manning, through counsel, respectfully responds to the Defendants' Statement of Material Facts as to which There is No Genuine Issue and also refers the Court to Ms. Manning's Statement of Material Facts, provided in the body of her Response to Defendants' Motion for Summary Judgment and Cross Motion for Summary Judgment.

1. Manning sent the FBI a document request dated February 20, 2015. See Declaration of David M. Hardy ("Hardy Decl."), attached to Defendants' Motion for Summary Judgment as Ex. 1, ¶ 6; Ex. A to Ex. 1.

Disputed. Ms. Manning sent her request on February 20, 2014. Doc. 12-2.

2. Manning's request sought records "of or relating to investigation conducted by the Washington Field Office of the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into the alleged disclosures of classified and sensitive but unclassified information by Private First Class (PFC) Bradley E. Manning, beginning in late 2010 and continuing until an unknown date, but as late as

mid-2012." Hardy Decl. ¶ 6, Ex. A. Manning also sought records "of or relating to the investigation conducted by the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into alleged civilian co-conspirators of the disclosures of information by Manning." Hardy Decl. ¶ 6, Ex. A.

Undisputed.

3. The FBI responded to Manning's request in a letter dated March 7, 2014. *See* Hardy Decl. ¶ 7, Ex. B. The FBI informed Manning that her request "did not contain sufficient information to conduct an adequate search of the Central Records System" and requesting additional information. *See* Hardy Decl. ¶ 7, Ex. B.

Undisputed.

4. Manning supplemented her request by letter dated March 18, 2014. *See* Hardy Decl. ¶ 8, Ex. C. Manning also modified her request to include records "of or relating to the investigation conducted by . . . the Department of Justice Counterepionage [sic] Section" into Manning's disclosures and records "of or relating to the investigation conducted by the Federal Bureau of Investigation and other agencies" into alleged co-conspirators. Hardy Decl. ¶ 8, Ex. C.

Undisputed but Incomplete. Ms. Manning modified her request so that it requested:

> a. Documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to investigation conduction by the Washington Field Office (WFO), the Department of Justice Counterepionage [sic] Section (CES), the U.S. Attorney's Office of the Eastern District of Virginia (E.D.Va.) into the alleged disclosures of classified and sensitive by [sic] unclassified information by then-Private First Class (PFC) Bradley Edward Manning (a.k.a Chelsea Elizabeth Manning).

> b. Any other documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to the investigation conducted by the Federal Bureau of Investigation and other agencies into suspected or alleged civilian co-conspirators of the disclosures alleged to have been conducted by Manning.
>
> Doc. 12-4.

5. By letter dated March 21, 2014, the FBI acknowledged receipt of Manning's FOIA request and advised her that it was searching its records system for potentially responsive records. Hardy Decl. ¶ 9, Ex. D.

Undisputed.

6. By letter dated April 3, 2014, the FBI denied Manning's request for expedited processing, explaining its conclusion that the topic of her request was not a matter "in which there exist possible questions about the government's integrity which affect public confidence." Hardy Decl. ¶ 10, Ex. E. The FBI also advised Manning that she could appeal this determination within sixty days from the date of the letter.

Undisputed.

7. On April 8, 2014, the FBI conducted an index search of its Central Records System ("CRS"), which is a comprehensive system that includes administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. The FBI determined that its search of the CRS was likely to locate any responsive documents. Hardy Decl. ¶ 29, 33. The FBI searched the CRS for responsive main files records, using a six-way phonetic breakdown of Manning's names, including any variations of the first or last. The FBI also used Manning's date of birth, place of birth, her description of the relevant investigation and case number. Hardy Decl. ¶ 30. The FBI located potentially responsive investigative records; upon review and following

communications with the Special Agent in charge of the investigation, the FBI concluded that the records were part of and related to pending enforcement proceedings. *Id*.

> **Undisputed** that the FBI concluded that the records were related to pending enforcement proceedings. However, Ms. Manning **disputes** the FBI's conclusion on the basis that she could not be the subject of "pending" or prospective enforcement proceeding because she has already been tried and convicted for the conduct from which the investigation arose. *See* Manning General Court-Martial Order No. 4 (Apr. 10, 2014), attached to Response as Ex. 5.

8. The FBI subsequently conducted an additional search for any cross references responsive to Manning's request using the same search terms used in its original search. Hardy Decl. ¶ 31. This search of the confirmed the results of the original search for main files and also identified additional responsive cross references. Review of the cross references revealed that they are also part of and related to pending enforcement proceedings. *Id*.

> **Disputed.** "Review of the cross references" did not "*reveal*[] that they [were] are also part of and related to pending enforcement proceedings," as asserted by the FBI. Instead, far from being self evident, the FBI made the affirmative determination that those records were related to pending enforcement proceedings. *See* Hardy Decl. ¶ 31. As stated above, Ms. Manning disputes that determination.

9. The FBI concluded that a separate search for records responsive to the second part of plaintiff's request (seeking records about the FBI's investigation of other individuals

involved in the unauthorized disclosure of classified materials that were published on the WikiLeaks website) was unnecessary because those records were maintained in the same files containing the records responsive to the first part of plaintiff's request (for records about herself). Hardy Decl. ¶ 32.

> **Undisputed** as to the FBI's *conclusion* that the two categories of records were maintained in the same file; however the Declaration provides insufficient facts to draw the conclusion independently that those records completely overlap.

10. The FBI determined that disclosure of the responsive records would adversely affect the FBI's pending investigation and any resulting prosecutions and that there was no reasonably segregable information. Hardy Decl. ¶ 38-48. The FBI also determined that the records may be exempt, in whole or in part, under one or more other FOIA exemptions. Hardy Decl. ¶ 33.

> **Disputed.** The Declaration provides on that the "FBI's segregability review determined there is no reasonable segregable information, including public source material, which can be released at this time without adversely affecting the investigation and any related prosecutions." Hardy Decl. ¶ 48. There is no evidence in the record illuminating what that "segregability review" entailed, *e.g.*, how and by whom it was conducted. As a consequence, Ms. Manning disputes that the FBI did, in fact, make a segregability determination based on a review, particularly in the face of the fact that the FBI conducted its search on the same day that it responded to Ms. Manning that the entire investigative

file was exempt. *See* Hardy Decl. ¶ 30; *see also* Doc. 12-7.

11. By letter dated April 8, 2104, the FBI advised Manning that the information she requested was located in a pending investigative file exempt from disclosure pursuant to FOIA Exemption 7(A). The FBI also advised Manning that she could appeal this determination to the Department of Justice's Office of Information Policy ("OIP") within sixty days from the date of the letter. Hardy Decl. ¶ 11, Ex. F.

Undisputed that the FBI invoked a categorical and blanket exemption on the records' being located in a "pending investigative file." Doc. 12-7. However, the FBI informed Ms. Manning of its determination on April 8, 2014, not 2104. Doc. 12-7.

12. By letter dated April 11, 2014, Manning appealed the FBI's denial of her request for expedited processing to OIP. Hardy Decl. ¶ 12, Attachment G.

Undisputed.

13. By letter dated April 17, 2014, Manning appealed the FBI's denial of her request pursuant to FOIA Exemption 7(A) to OIP and also challenged the FBI's failure to address her request for disclosure of the requested records under the Privacy Act. Hardy Decl. ¶ 13, Ex. H.

Undisputed.

14. By letter dated April 29, 2014, OIP acknowledged receipt of Manning's appeal of the denial of expedited processing and advised Manning it was closing the appeal because the FBI had already responded to her request, rendering the expedited processing request moot. Hardy Decl. ¶ 14, Ex. I.

Undisputed.

15. By letter dated May 7, 2014, OIP acknowledged receipt of Manning's April 17, 2104 appeal of the FBI's denial of her request pursuant to Exemption 7(A) and advised her that it would notify her of its decision as soon as possible. Hardy Decl. ¶ 15, Ex. J.

Undisputed as to substance; however Ms. Manning appealed the FBI's categorical denial of her request on April 17, 2014, not 2104. Doc. 12-9.

16. By letter dated August 7, 2014, OIP affirmed the FBI's action on Manning's request, determining that the FBI properly denied the request pursuant to Exemption 7(A) and that the records responsive to the request were exempt from the access provision of the Privacy Act. Hardy Decl. ¶ 16, Exhibit K. OIP further advised Manning that she could file a lawsuit in federal district court and/or seek the mediation services of the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to resolve her dispute with the FBI. *Id.*

Undisputed.

17. By letter dated January 5, 2015, Manning requested assistance from OGIS. Hardy Decl. ¶ 17, Ex. L.

Undisputed.

18. By letter dated January 16, 2015, OGIS acknowledged receipt of Manning's mediation services request. Hardy Decl. ¶ 18, Ex. M.

Undisputed.

19. By letter dated February 24, 2015, OGIS responded to Manning's mediation request and provided additional explanation about the application of Exemption 7(A). Hardy Decl. ¶ 19, Ex. N.

Undisputed.

20. Manning filed the instant lawsuit on October 8, 2015. *See* ECF No. 1 (Complaint).

Undisputed.

Respectfully Submitted,

FREEDMAN BOYD HOLLANDER GOLDBERG URIAS & WARD P.A

/s/ Nancy Hollander
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D.C. Bar No. TX0061

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(505) 842-9960

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on the 29th day of April, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Nancy Hollander
Nancy Hollander

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING a/k/a
BRADLEY E. MANNING,

Plaintiff,

v. Case No. 1:15-cv-01654-APM

U.S. DEPARTMENT OF JUSTICE and the
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S CROSS MOTION FOR SUMMARY JUGMENT

The Court having considered all briefs filed in support of and in opposition to Defendants' Motion for Summary Judgment and Plaintiff's Cross Motion for Summary Judgment, and good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is DENIED, and Plaintiff's Cross Motion for Summary Judgment is GRANTED.

Dated: _____, 2016

_____
The Honorable Amit P. Mehta
United States District Court for the
District of Columbia