

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AZMAT KHAN,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
DEFENSE

and

UNITED STATES CENTRAL COMMAND

Defendants.

Civil Action No. 18-5334

COMPLAINT

Plaintiff Azmat Khan (“Plaintiff” or “Ms. Khan”), by and through her undersigned counsel, hereby alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief brought by Azmat Khan, an award-winning investigative reporter, regarding three FOIA requests she submitted to Defendants Department of Defense (“DoD”) and its component, United States Central Command (“CENTCOM”) (collectively, “Defendants”). Ms. Khan’s FOIA requests seek specific records concerning allegations of civilian casualties and related reporting procedures from the U.S.-led operation in Iraq and Syria known as “Operation Inherent Resolve.” By this action, Ms. Khan seeks to compel Defendants to comply with their obligations under FOIA, including disclosing records they have, to date, unlawfully withheld from her and the public.

PARTIES

2. Plaintiff Azmat Khan is an investigative journalist who resides in Manhattan. Her principal place of business is at 18 West 21st St., Suite 900, New York, NY 10010.

3. Defendant United States Department of Defense is an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f). DoD has possession, custody, and/or control of the records that Plaintiff seeks. DoD's headquarters are located at 1400 Defense Pentagon, Washington, D.C. 20301.

4. Defendant United States Central Command is a component of DoD and an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f). CENTCOM has possession, custody, and/or control of the records that Plaintiff seeks. CENTCOM's headquarters are located at 7115 South Boundary Boulevard, MacDill AFB, FL 33621-5101.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action and personal jurisdiction over Defendants pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(E)(iii), and 28 U.S.C. § 1331.

6. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS

Background

7. For years, the United States and its coalition partners (the "Coalition") have combated the Islamic State in Iraq and Syria ("ISIS")—also known as the Islamic State of Iraq and the Levant ("ISIL"), Daesh, or Da'esh—as part of "Operation Inherent Resolve." *See, e.g., Operation Inherent Resolve*, U.S. Department of Defense, <https://www.defense.gov/OIR/>.

8. Since 2014, the U.S.-led Coalition has conducted more than 27,500 airstrikes in Iraq and Syria in connection with its efforts to contain and destroy ISIS. *See* Azmat Khan & Anand Gopal, *The Uncounted*, N.Y. Times Magazine (Nov. 16, 2017), <https://nyti.ms/2juNRXb>

9. Defendants have an internal reporting and assessment process to evaluate allegations of civilian harm as a result of Coalition airstrikes. In addition, non-governmental organizations and journalists bring reports of civilian casualties to the Coalition.

10. Defendants publish monthly statements of its assessments into allegations of civilian casualties resulting from Coalition airstrikes, deeming them either “credible” or “non-credible.”

11. According to Major Shane Huff, a spokesman for CENTCOM, “U.S. and coalition forces work very hard to be precise in airstrikes” conducted as part of “Operation Inherent Resolve,” and “are conducting one of the most precise air campaigns in military history.” *Id.*

12. Coalition airstrikes, however, have resulted in the documented deaths of numerous civilians in Iraq and Syria. Moreover, journalists and non-governmental organizations have long questioned the discrepancy between the Coalition’s official tally of such deaths and their own findings. *See id.*

13. The publication of an allegation as “credible” or “non-credible” in Defendants’ monthly statements means Defendants have generated a number of documents related to their investigation into that allegation. Such documents may include, but are not limited to, credibility assessment reports and closure reports.

14. A credibility assessment, also known as a Civilian Casualty Assessment Report or CCAR, is Defendants’ preliminary formal assessment of a reported or alleged civilian

casualty; its purpose is to assess whether it is more likely than not that a civilian or civilians were killed by a Coalition airstrike.

15. A closure report is generated as part of a Commander-Directed Investigation (also known as an AR15-6), which are performed in cases when a positive credibility assessment requires further investigation and that further investigation is complete.

16. On or about November 16, 2017, *The New York Times Magazine* published an article co-authored by Plaintiff titled “The Uncounted.” The article offers an unprecedented and in-depth look at the civilian death toll from the U.S.-led Coalition airstrike campaign against ISIS in Iraq and Syria. *Id.* A true and correct copy of “The Uncounted” is attached hereto as Exhibit A.

17. In connection with her reporting, Plaintiff and her reporting partner, Anand Gopal, visited the sites of approximately 150 airstrikes that took place in Iraq between 2014 and 2016. They “dug through the debris for bomb fragments,” interviewed “hundreds of witnesses, survivors, family members, intelligence informants and local officials[,]” and reviewed satellite imagery. *Id.* They also interviewed “senior commanders, intelligence officials, legal advisers and civilian-casualty assessment experts” at the United States’ Al-Udeid Air Base in Qatar. *Id.*

18. “The Uncounted” details, among other things, the story of the Razzo family: two brothers, Basim and Mohannad, who lived with their families in adjacent houses in Mosul, Iraq. *Id.* As the article reports:

Late on the evening of Sept. 20, 2015, Basim Razzo sat in the study of his home on the eastern side of Mosul, his face lit up by a computer screen. His wife, Mayada, was already upstairs in bed

The Razzos lived in the Woods, a bucolic neighborhood on the banks of the Tigris, where marble and stucco villas sprawled amid forests of eucalyptus, chinar and pine. Cafes and restaurants lined the riverbanks, but ever since the city fell to ISIS the previous year, Basim and Mayada had preferred to entertain at home. They

would set up chairs poolside and put kebabs on the grill, and Mayada would serve pizza or Chinese fried rice, all in an effort to maintain life as they'd always known it. [. . .]

Next door to Basim's home stood the nearly identical home belonging to his brother, Mohannad, and his wife, Azza. They were almost certainly asleep at that hour, but Basim guessed that their 18-year-old son, Najib, was still up. A few months earlier, he was arrested by the ISIS religious police for wearing jeans and a T-shirt with English writing. They gave him 10 lashes and, as a further measure of humiliation, clipped his hair into a buzz cut. Now he spent most of his time indoors, usually on Facebook. "Someday it'll all be over," Najib had posted just a few days earlier. "Until that day, I'll hold on with all my strength." [. . .]

Around midnight, Basim heard a thump from the second floor. He peeked out of his office and saw a sliver of light under the door to the bedroom of his daughter, Tuqa. He called out for her to go to bed. At 21, Tuqa would often stay up late, and though Basim knew that he wasn't a good example himself and that the current conditions afforded little reason to be up early, he believed in the calming power of an early-to-bed, early-to-rise routine. He waited at the foot of the stairs, called out again, and the sliver went dark.

It was 1 a.m. when Basim finally shut down the computer and headed upstairs to bed. He settled in next to Mayada, who was fast asleep.

Some time later, he snapped awake. His shirt was drenched, and there was a strange taste — blood? — on his tongue. The air was thick and acrid. He looked up. He was in the bedroom, but the roof was nearly gone. He could see the night sky, the stars over Mosul. Basim reached out and found his legs pressed just inches from his face by what remained of his bed. He began to panic. He turned to his left, and there was a heap of rubble. "Mayada!" he screamed. "Mayada!" It was then that he noticed the silence. "Mayada!" he shouted. "Tuqa!" The bedroom walls were missing, leaving only the bare supports. He could see the dark outlines of treetops. He began to hear the faraway, unmistakable sound of a woman's voice. He cried out, and the voice shouted back, "Where are you?" It was Azza, his sister-in-law, somewhere outside.

"Mayada's gone!" he shouted.

"No, no, I'll find her!"

"No, no, no, she's gone," he cried back. "They're all gone!"

19. In researching the airstrikes that killed four members of the Razzo family for "The Uncounted," Ms. Khan submitted a FOIA request to CENTCOM. In response to that

request, CENTCOM produced partially-redacted copies of the credibility assessment and closure report for the September 21, 2015 Coalition airstrikes. True and correct copies of the partially redacted credibility assessment and closure report, as provided to Plaintiff, are attached collectively as Exhibit B.

20. The partially redacted credibility assessment report regarding the Razzo family that Ms. Khan obtained pursuant to FOIA stated that “the allegation of civilian casualties is deemed CREDIBLE.” *Id.*

21. The partially redacted closure report, dated February 13, 2017, that was provided to Ms. Khan in response to her FOIA request enabled her to inform the public that the Coalition’s airstrikes targeting the homes of Basim and Mohannad Razzo were likely due to faulty intelligence. As Plaintiff reported in “The Uncounted”:

the coalition had been receiving intelligence that [Basim’s] and Mohannad’s houses were an ISIS command center. The report suggests that this may have been because of the J.C.C. next door; Basim recalled that ISIS briefly occupied the J.C.C. when it first conquered Mosul but had long since abandoned the facility. Yet the coalition’s intelligence source apparently passed along this outdated information and in the process confused his house with the J.C.C.

Ex. A. While “no overtly nefarious activity was observed[.]” in subsequent drone surveillance of the Razzo’s homes, the Coalition nonetheless proceeded with airstrikes. *Id.*

22. The deaths of Mayada, Tuqa, Mohannad, and Najib were not originally included in the Coalition’s civilian death casualty tally reportedly due to “an administrative oversight.” *Id.*

23. Ms. Khan’s investigation for “The Uncounted” found that “one in five of the coalition strikes [she and Mr. Gopal] identified resulted in civilian death, a rate more than 31 times that acknowledged by the coalition[.]” in its monthly civilian casualty reports. It also found

“a consistent failure by the coalition to investigate claims [of civilian deaths] properly or to keep records that make it possible to investigate the claims at all.” *Id.*

24. Following publication of “The Uncounted,” *The New York Times* Editorial Board wrote an editorial based on Ms. Khan’s reporting, noting that:

A system intended to ensure transparency and accountability appears, instead, to be enabling the Pentagon to fool itself as well as the rest of us about the true cost of its strikes. . . . Leaders need to be honest that there is no such thing as antiseptic combat, while Americans need to understand the full cost and consequences of military actions undertaken in their names.

Ed. Bd., *Telling the Truth About the Cost of War*, N.Y. Times (Nov. 23, 2107),

<https://nyti.ms/2i0GhDi>.

25. Ms. Khan’s groundbreaking article was widely disseminated and prompted discussion across the country and around the world about the civilian death toll wrought by Coalition airstrikes in Iraq and Syria, including among current and former U.S. government officials. Two former members of the Obama administration wrote that:

[Ms. Khan’s and Mr. Gopal’s] *New York Times Magazine* piece, and the verified tragedy of the Razzo family at its center, are emblematic of a bigger story that unfortunately rings true. . . . The *Times* story is one of faulty intelligence driving wrong-headed assumptions that decimate innocent lives and embitter survivors. It is a story about how a legal and bureaucratic fog can make it almost impossible for tragic mistakes to come to light, too often leaving instead a false sense of comfort that such mistakes never happened at all. And it is a story about a policy that warrants honest discussion, and change.

Robert Malley & Stephen Pomper, *An Accounting for the Uncounted*, *The Atlantic* (Dec. 16,

2017), [https://www.theatlantic.com/international/archive/2017/12/isis-obama-civilian-](https://www.theatlantic.com/international/archive/2017/12/isis-obama-civilian-casualties/548501/)

[casualties/548501/](https://www.theatlantic.com/international/archive/2017/12/isis-obama-civilian-casualties/548501/). *See also, e.g., Report finds disparities in civilian deaths from U.S.-led ISIS bombing campaign*, PBS News Hour (Nov. 17, 2017),

[https://www.pbs.org/newshour/show/report-finds-disparities-in-civilian-deaths-from-u-s-led-isis-](https://www.pbs.org/newshour/show/report-finds-disparities-in-civilian-deaths-from-u-s-led-isis-bombing-campaign)

[bombing-campaign](https://www.pbs.org/newshour/show/report-finds-disparities-in-civilian-deaths-from-u-s-led-isis-bombing-campaign); *NYT Civilian Casualties Story Should Be a ‘Wake Up Call’ for US Military*,

Center for Civilians in Conflict (Nov. 16, 2017), <https://civiliansinconflict.org/press-releases/nyt-response-civilian-casualties/>; Patrick Cockburn, *There's no such thing as precise air strikes in modern warfare – just look at the civilian casualties in Iraq and Syria*, *The Independent* (Dec. 1, 2017), <http://www.independent.co.uk/voices/iraq-syria-theres-no-such-thing-as-precise-air-strikes-in-modern-warfare-a8087286.html>; *'New York Times' Reporter On The Investigation Into U.S. Airstrikes In Iraq*, NPR (Nov. 17, 2017), <https://www.npr.org/2017/11/17/564936476/new-york-times-reporter-on-the-investigation-into-u-s-airstrikes-in-iraq>; *Drone Strike Discrepancies*, CBS News, <https://www.cbsnews.com/video/drone-strike-discrepancies/> (last accessed Apr. 19, 2018); Alex Ward, *Report: the US-led war against ISIS is killing 31 times more civilians than claimed*, *Vox* (Nov. 16, 2017), <https://www.vox.com/world/2017/11/16/16666628/iraq-nyt-casualties-civilian>.

26. Congress also took note of Ms. Khan's reporting. Senator Patrick Leahy wrote an op-ed in *The New York Times* in response to "The Uncounted" that called on Defendants "to improve the accuracy of its own airstrike data and overhaul the often perfunctory way it investigates reports of civilian casualties." Sen. Patrick Leahy, *What We Owe the Innocent Victims of America's Wars*, *N.Y. Times* (Nov. 22, 2017), <https://nyti.ms/2hWNXGY>. Congressman Ted Lieu, also citing "The Uncounted," sent a letter to Secretary of Defense James Mattis noting that "the findings of the *New York Times* investigation suggest the coalition is not properly executing U.S. policy in terms of limiting civilian casualties and is not accurately reporting civilian casualties." Letter from Rep. Ted W. Lieu to Sec. of Defense James Mattis (Nov. 20, 2017), *archived at* <https://perma.cc/6UCK-5AZS>.

27. "The Uncounted" has been widely recognized and awarded, including winning the 2018 National Magazine Award in Reporting from the American Society of Magazine

Editors, the Overseas Press Club's Ed Cunningham Award for best magazine reporting in print or digital on an international story, the Hillman Prize for Magazine Journalism, and the Deadline Club Award for Magazine Investigative Reporting. See *T Magazine and The New York Times Magazine Honored With National Magazine Awards*, The N.Y. Times (Mar. 14, 2018), <https://www.nytc.com/t-magazine-and-the-new-york-times-magazine-honored-with-national-magazine-awards/>; *Overseas Press Club of America Announces Annual Award Winners*, Overseas Press Club of America (Mar. 21, 2018), <https://opcofamerica.org/overseas-press-club-of-america-announces-annual-award-winners/>; *The New York Times Magazine Honored with 2018 Hillman Prize for Magazine Journalism*, The N.Y. Times (Apr. 25, 2018), <https://www.nytc.com/the-new-york-times-magazine-honored-with-2018-hillman-prize-for-magazine-journalism/>; *Judges Comments from the 2017 Awards*, Deadline Club, <http://www.deadlineclub.org/judges-comments-from-the-2017-awards/>.

28. Since publication of "The Uncounted," Ms. Khan has continued to research civilian casualties from the ongoing U.S.-led "Operation Inherent Resolve" for purposes of her reporting. As detailed below, in connection with that research, Ms. Khan has submitted additional FOIA requests to Defendants; three of those FOIA requests are at issue here.

Plaintiff's FOIA Requests

Plaintiff's First Request

29. On or about March 28, 2017, Plaintiff submitted a FOIA request to CENTCOM via e-mail. A true and correct copy of that request (the "First Request") is attached hereto as Exhibit C, and is incorporated by reference.

30. The First Request sought copies of credibility assessments from 38 specified Coalition airstrikes that took place in Iraq from 2015 through 2017 in which civilian casualties were deemed to be “credible.”

31. To facilitate CENTCOM’s search for responsive records, the First Request attached press releases and reports from DoD concerning each of the airstrike assessments identified in the First Request.

32. The First Request identified Ms. Khan as a reporter and requested a fee categorization as a representative of the news media.

33. The First Request also asked for a waiver of all fees associated with the First Request.

34. The First Request also asked for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), and set forth facts and arguments in support thereof.

35. In the First Request, Plaintiff certified that her statement of compelling need for expedited processing was true and correct to the best of her knowledge and belief.

Plaintiff’s Second Request

36. On or about January 19, 2018, Plaintiff submitted a second FOIA request to CENTCOM via e-mail. A true and correct copy of that request (the “Second Request”) is attached hereto as Exhibit D, and is incorporated by reference.

37. The Second Request asked for copies of credibility assessments and closure report records from 167 specified Coalition airstrike incidents that took place in Iraq and Syria during from 2015 through 2017, in which civilian casualties were deemed to be “credible.”

38. Again, to facilitate CENTCOM's search for responsive records, the Second Request attached press releases and reports from DoD concerning each of the airstrike assessments identified in the Second Request.

39. The Second Request identified Ms. Khan as a reporter and requested a fee categorization as a representative of the news media.

40. The Second Request also asked for a waiver of all fees associated with the Second Request.

41. The Second Request also asked for expedited processing, and set forth facts and arguments in support thereof. Specifically, Plaintiff requested expedited processing for the Second Request on three grounds: (1) a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(I); (2) failure to obtain the requested information on an expedited basis could reasonably be expected to harm substantial humanitarian interests, pursuant to 32 C.F.R. 286.8(e)(1)(ii)(B); and (3) she is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged federal government activity, pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).

42. In the Second Request, Plaintiff certified that her statement of compelling need for expedited processing was true and correct to the best of her knowledge and belief.

Plaintiff's Third Request

43. On or about March 30, 2018, Plaintiff submitted a Third FOIA request to CENTCOM via e-mail. A true and correct copy of that request (the "Third Request") is attached hereto as Exhibit E, and is incorporated by reference.

44. The Third Request asked for three categories of records:

- (A) An unclassified document titled “Operation Inherent Resolve Standard Operating Procedure Civilian Casualty Reporting and Response Procedures”;
- (B) The credibility assessment, and when available closure report records, regarding 16 specific reports of civilian casualties assessed to be credible according to CENTCOM press releases;
- (C) Credibility assessment records regarding 1,168 specified reports of civilian casualties assessed to be “non-credible” according to various CENTCOM press releases.

Ex. C.

45. To facilitate CENTCOM’s search for responsive records, the Third Request provided links to CENTCOM press releases published online.

46. The Third Request identified Ms. Khan as a reporter and requested a fee categorization as a representative of the news media.

47. The Third Request also asked for a waiver of all fees associated with the Third Request.

48. The Third Request also asked for expedited processing, and set forth facts and arguments in support thereof. Specifically, Plaintiff requested expedited processing for the Third Request on three grounds: (1) a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(I); (2) failure to obtain the requested information on an expedited basis could reasonably be expected to harm substantial humanitarian interests, pursuant to 32 C.F.R. 286.8(e)(1)(ii)(B); and (3) she is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged federal government activity, pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).

49. In the Third Request, Plaintiff certified that her statement of compelling need for expedited processing was true and correct to the best of her knowledge and belief.

**Defendants' Treatment of Plaintiff's FOIA Requests
and Administrative Proceedings**

Plaintiff's First Request

50. By letter dated April 4, 2017, CENTCOM confirmed receipt of the First Request. A true and correct copy of CENTCOM's April 4, 2017 letter (the "First Request Acknowledgment") is attached hereto as Exhibit F, and is incorporated by reference.

51. In the First Request Acknowledgment, CENTCOM granted Ms. Khan's request for a fee waiver and denied her request for expedited processing. *See* Ex. F.

52. On or about April 17, 2017, Ms. Khan, through her counsel, submitted an administrative appeal regarding CENTCOM's denial of expedited processing for the First Request. A true and correct copy of that administrative appeal (the "First Request Administrative Appeal") is attached hereto as Exhibit G and is incorporated by reference.

53. By letter dated April 24, 2017, DoD acknowledged receipt of the First Request Administrative Appeal. A true and correct copy of the DoD's April 24, 2017 acknowledgement is attached hereto as Exhibit H, and is incorporated by reference.

54. In response to an inquiry from Ms. Khan's counsel, the FOIA Appeals Chief at DoD stated via e-mail on or about July 10, 2017 that the First Request Administrative Appeal was number 363 out of 406 in their queue, and provided an estimated date of completion of November 10, 2017.

55. In response to a subsequent inquiry from Ms. Khan's counsel, the FOIA Appeals Chief at DoD stated via e-mail on or about October 31, 2017 that the First Request

Administrative Appeal was number 353 out of 475 in their queue, and provided an estimated date of completion of December 1, 2017.

56. Neither Ms. Khan nor her counsel have received any subsequent communication from CENTCOM or DoD regarding the status of the First Request or the First Request Administrative Appeal.

57. As of the date of this filing it has been 442 calendar days since the First Request was submitted and 422 calendar days since the First Request Administrative Appeal was submitted.

Plaintiff's Second Request

58. Ms. Khan did not receive any communication from CENTCOM regarding her request for expedited processing of the Second Request within 10 calendar days as required by FOIA.

59. On or about February 5, 2018, Plaintiff's counsel contacted CENTCOM's public liaison via e-mail on Plaintiff's behalf to inquire as to the status of the Second Request.

60. On or about that same day, February 5, 2018, the CENTCOM Requester Service Center sent Plaintiff's counsel a letter via e-mail dated January 25, 2018 acknowledging receipt of Ms. Khan's Second Request (the "Second Request Acknowledgement"). A true and correct copy of the Second Request Acknowledgment is attached hereto as Exhibit I, and is incorporated by reference.¹

61. In the Second Request Acknowledgement, CENTCOM granted Plaintiff's request for a fee waiver in connection with the Second Request and denied her request for expedited processing. *See* Ex. I.

¹ Ms. Khan later received a paper copy of the Second Request Acknowledgement via U.S. Mail, in an envelope postmarked February 5, 2018.

62. On or about February 8, 2018, Ms. Khan, through her counsel, submitted an administrative appeal regarding CENTCOM's denial of expedited processing for the Second Request. A true and correct copy of that administrative appeal (the "Second Request Administrative Appeal") is attached hereto as Exhibit J, and is incorporated by reference.

63. Neither Ms. Khan nor her counsel have received any subsequent communication from CENTCOM or DoD regarding the status of the Second Request or the Second Request Administrative Appeal.

64. As of the date of this filing it has been 145 calendar days since the Second Request was submitted and 125 calendar days since the Second Request Administrative Appeal was submitted.

Plaintiff's Third Request

65. By letter dated April 4, 2018, CENTCOM confirmed receipt of the Third Request. A true and correct copy of CENTCOM's April 4, 2018 letter (the "Third Request Acknowledgment") is attached hereto as Exhibit K, and is incorporated by reference.

66. In the Third Request Acknowledgement, CENTCOM granted Plaintiff's request for a fee waiver in connection with the Third Request and denied her request for expedited processing. *See* Ex. K.

67. On or about April 10, 2018, Ms. Khan, through her counsel, submitted an administrative appeal regarding CENTCOM's denial of expedited processing for the Third Request. A true and correct copy of that administrative appeal (the "Third Request Administrative Appeal") is attached hereto as Exhibit L, and is incorporated by reference.

68. By letter dated April 12, 2018, Ms. Khan's counsel received a letter from the Department of Defense acknowledging receipt of the Third Request Administrative Appeal and stating it was "unable to complete your appeal within the statutory time requirement." A true

and correct copy of that April 12, 2018 letter is attached hereto as Exhibit M, and is incorporated by reference.

69. By letter dated May 9, 2018, Ms. Khan's counsel received a letter from the Department of Defense in response to the Third Request Administrative Appeal, which affirmed the denial of expedited processing for the Third Request. A true and correct copy of that May 9, 2018 letter is attached hereto as Exhibit N, and is incorporated by reference.

70. Neither Ms. Khan nor her counsel have received any subsequent communication from CENTCOM or DoD regarding the status of the Third Request.

71. As of the date of this filing it has been 75 calendar days since the Third Request was submitted.

CAUSES OF ACTION

Count I

Violation of FOIA for Failure to Grant Expedited Processing

72. Plaintiff repeats, realleges, and incorporates the allegations set forth in paragraphs 1–71 as though fully set forth herein.

73. Defendants are agencies subject to FOIA. 5 U.S.C. § 552(f); 5 U.S.C. § 551.

74. Plaintiff's First Request, Second Request, and Third Request properly seek records within the possession, custody, and/or control of Defendants under FOIA.

75. The First Request, Second Request, and Third Request complied with all applicable regulations regarding the submission of FOIA requests and requesting expedited processing.

76. In the First Request, Plaintiff set forth sufficient facts and argument entitling her to expedited processing of that request pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).

77. In the Second Request and Third Request, Plaintiff set forth sufficient facts and argument entitling her to expedited processing of that request pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(I), 32 C.F.R. 286.8(e)(1)(ii)(B), and/or 5 U.S.C. § 552(a)(6)(E)(v)(II).

78. Defendants unlawfully denied expedited processing of the First Request, Second Request, and Third Request.

79. Plaintiff has and/or is deemed to have exhausted administrative remedies with respect to the First Request, Second Request, and Third Request.

80. Defendants' denial of expedited processing for the First Request, Second Request, and Third Request is a violation of their obligations under FOIA.

Count II

Violation of FOIA for Failure to Comply with Statutory Deadlines Regarding Expedited Processing

81. Plaintiff repeats, realleges, and incorporates the allegations set forth in paragraphs 1–71 as though fully set forth herein.

82. Defendants are agencies subject to FOIA. 5 U.S.C. § 552(f); 5 U.S.C. § 551.

83. Plaintiff's First Request, Second Request, and Third Request properly seek records within the possession, custody, and/or control of Defendants under FOIA.

84. The First Request, Second Request, and Third Request complied with all applicable regulations regarding the submission of FOIA requests.

85. Defendants failed to process the First Request, Second Request, and Third Request "as soon as practicable," as required by FOIA. 5 U.S.C. § 552(a)(6)(E)(iii).

86. Defendants failed to provide "expeditious consideration" of the First Request Administrative Appeal and Second Request Administrative Appeal, as required by FOIA. 5 U.S.C. § 552(a)(6)(E)(ii)(II).

87. Plaintiff has and/or is deemed to have exhausted administrative remedies with respect to the First Request, Second Request, and Third Request.

88. Defendants' failure to comply with FOIA's statutory deadlines regarding expedited processing is a violation of their obligations under FOIA. 5 U.S.C. § 552(a)(6)(E).

Count III

Violation of FOIA for Improper Withholding of Agency Records

89. Plaintiff repeats, realleges, and incorporates the allegations set forth in paragraphs 1–71 as though fully set forth herein.

90. Defendants are agencies subject to FOIA. 5 U.S.C. § 552(f); 5 U.S.C. § 551.

91. Plaintiff's First Request, Second Request, and Third Request properly seek records within the possession, custody, and/or control of Defendants under FOIA.

92. The First Request, Second Request, and Third Request complied with all applicable regulations regarding the submission of FOIA requests.

93. Defendants have not released any records or portions thereof in response to the First Request, Second Request, or Third Request.

94. Defendants have not cited any exemptions to withhold records or portions thereof that are responsive to the First Request, Second Request, or Third Request.

95. Defendants have not identified whether or how disclosure of each of the records or portions thereof sought by the First Request, Second Request, and Third Request would foreseeably harm an interest protected by a FOIA exemption and/or why disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A).

96. Plaintiff has and/or is deemed to have exhausted administrative remedies with respect to the First Request, Second Request, and Third Request.

97. Defendants' withholding of records responsive to the First Request, Second Request, and Third Request is a violation of their obligations under FOIA. 5 U.S.C. § 552(a)(3)(A).

Count IV

Violation of FOIA for Failure to Conduct a Reasonable Search

98. Plaintiff repeats, realleges, and incorporates the allegations set forth in paragraphs 1–71 as though fully set forth herein.

99. Defendants are agencies subject to FOIA. 5 U.S.C. § 552(f); 5 U.S.C. § 551.

100. Plaintiff's First Request, Second Request, and Third Request properly seek records within the possession, custody, and/or control of Defendants under FOIA.

101. Defendants have failed to conduct a search reasonably calculated to identify all records responsive to the First Request, Second Request, and Third Request.

102. Plaintiff has and/or is deemed to have exhausted administrative remedies with respect to the First Request, Second Request, and Third Request.

103. Defendants' failure to conduct a search reasonably calculated to identify all records responsive to the First Request, Second Request, and Third Request is a violation of their obligations under FOIA. 5 U.S.C. § 552(a)(3).

Count V

Violation of FOIA for Failure to Comply with Statutory Deadlines

104. Plaintiff repeats, realleges, and incorporates the allegations set forth in paragraphs 1–71 as though fully set forth herein.

105. Defendants are agencies subject to FOIA. 5 U.S.C. § 552(f); 5 U.S.C. § 551.

106. Plaintiff's First Request, Second Request, and Third Request properly seek records within the possession, custody, and/or control of Defendants under FOIA.

107. The First Request, Second Request, and Third Request complied with all applicable regulations regarding the submission of FOIA requests.

108. Defendants failed to make a determination with respect to the First Request, Second Request, and Third Request within the 20 working-day deadline mandated by FOIA for non-expedited requests. 5 U.S.C. § 552(a)(6)(A).

109. Plaintiff has and/or is deemed to have exhausted her administrative remedies with respect to the First Request, Second Request, and Third Request.

110. Defendants' failure to make a determination with respect to the First Request, Second Request, and Third Request within 20 working days as mandated by FOIA is a violation of their obligations under the law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- (1) issue a declaration that Plaintiff is entitled to expedited processing of the First Request, Second Request, and Third Request;
- (2) order Defendants to immediately process Plaintiff's First Request, Second Request, and Third Request;
- (3) order Defendants to conduct searches reasonably calculated to identify all records responsive to Plaintiff's First Request, Second Request, and Third Request;
- (4) issue a declaration that Plaintiff is entitled to disclosure of the records sought by the First Request, Second Request, and Third Request;
- (5) enjoin Defendants from withholding all records or portions thereof responsive to Plaintiff's First Request, Second Request, and Third Request that are not specifically exempt from disclosure under FOIA;

- (6) award Plaintiff reasonable attorney fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (7) grant such other relief as the Court may deem just and proper.

Dated: June 13, 2018

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

NY Bar No. 5480199

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