UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MORRIS D. DAVIS, Plaintiff, v. JAMES H. BILLINGTON, in his official capacity as the Librarian of Congress, Defendant.	No. 1:10-CV-36-RBW

DECLARATION OF RICHARD F. GRIMMETT

I, Richard F. Grimmett, hereby declare and state as follows:

1. I submit this declaration based on my personal knowledge.

2. I was a colleague of plaintiff Colonel Morris Davis during his entire tenure at the Congressional Research Service (CRS). I was employed as a Specialist in International Security with the Foreign Affairs, Defense, and Trade Division (FDT) of CRS, where Col. Davis was Assistant Director. Throughout my approximately 38-year career at CRS, my areas of responsibility included U.S. military basing overseas, intelligence oversight, war powers, international arms transfers, and U.S. foreign military assistance, among others.

3. I am a native of Akron, Ohio. I received my undergraduate degree with honors and a Ph.D. in American Diplomatic History with a focus on U.S. national security policy, both from Kent State University.

4. Subsequent to the awarding of my doctoral degree, I was hired by CRS in 1974 as an analyst to work on international security-related issues, and shortly thereafter became my

CRS division's lead intelligence policy analyst. I worked in the same division for my entire career at CRS, although this division underwent two name changes. Originally it was called the Foreign Affairs Division, then it was renamed the Foreign Affairs and National Defense Division, and finally it became the Foreign Affairs, Defense and Trade Division, which is its current title.

5. The Foreign Affairs, Defense and Trade Division (FDT) had no responsibility for research or advice regarding the American military commission system in general, nor over the military commissions held at Guantánamo Bay. Those topics were the exclusive responsibility of the American Law Division of CRS, and were considered legal, rather than policy, issues at CRS. To my knowledge, the only CRS employees publicly held out as experts on these topics or listed on reports to Congress all worked within the American Law Division, and included Jennifer Elsea, Chuck Mason, and Michael Garcia.

6. I am aware that Col. Davis was occasionally consulted on discrete topics related to Guantánamo Bay by his colleagues in the American Law Division, due to his immense personal knowledge on the subject from his prior role as Chief Prosecutor for the military commissions at Guantánamo. It was my understanding that he offered this advice and knowledge in the role of an informal consultant; no one at FDT had any formal or public responsibility for anything involving Guantánamo Bay or the related military commissions. If anyone within FDT had been tapped to work on military commissions issues, to the best of my knowledge it would likely have been me, as I was an expert on war powers. However, I was never asked to work on the military commissions issues broadly or Guantánamo specifically.

7. I worked at CRS under the tenure of several different Directors. As a general matter, until the directorship of Daniel Mulhollan, who ran CRS during the events set forth in the

Complaint in this case, outside speaking and writing were encouraged. Director Mulhollan stood out as markedly different from his predecessors in this regard, particularly in his hypersensitivity to outside criticism from congressional offices and their staff.

8. Under Director Mulhollan, we occasionally had all-staff meetings to discuss various matters affecting CRS. One recurring topic at the meetings which I attended was the supposed complaints expressed by members of Congress or their staff about commentaries in CRS materials and reports that they found to be objectionable. Invariably Director Mulhollan (or a member of his leadership team in his presence) would express the need for CRS analysts to be extraordinarily careful about the commentaries in our CRS work and to avoid engendering controversy to the greatest extent possible. When CRS staff at these meetings pressed Director Mulhollan to provide specific examples and details of particular congressional complaints (such as problematic language or content in reports or memoranda, or the specific identities of complaining offices, members or staff), I distinctly recall that Director Mulhollan would not do so. Rather, he stressed in general terms that CRS analysts should strive for neutrality in our work and make a concerted effort to prevent our work from becoming party to controversy.

9. I found Director Mulhollan's emphasis on neutrality and the strict avoidance of controversy to be a vague and confusing standard that was generally at odds with the nature of a CRS analyst's job responsibilities. There is no fully neutral, totally non-controversial way to address the key elements of a contested public policy issue. It is simply not possible for CRS analysts to do their job to provide Congress with an expert, non-partisan analysis of key issues without risking some controversy. The comprehensive, fact-based, analytical work of CRS analysts on major subjects of paramount public policy concern always has the inherent potential for being controversial to partisan actors in the U.S. political arena – those individuals who only

wish to see CRS commentaries that may support their preferred policy positions, and who will criticize reports that provide alternative perspectives. CRS analysts cannot fulfill the mandate of their jobs to serve the U.S. Congress as non-partisan experts in their subject areas without addressing, in the course of their written and briefing work, issues that are highly charged politically. A notable illustration of a CRS product that became a subject of significant public policy controversy was the January 2006 memorandum by my colleagues Elizabeth Bazan and Jennifer Elsea of the American Law Division of CRS, which examined the legal authority for warrantless wireless surveillance, as defended by then-president George W. Bush's administration. This memorandum, to the best of my knowledge, was formally cleared by both Richard Ehlke, then Chief of the American Law Division, and the Review Office of CRS before being provided to Congress. It concluded, among other things, that it was "unlikely" that such a program had been authorized, "expressly or impliedly" by Congress, and that "the Administration's legal justification, as presented in the summary analysis from the Office of Legislative Affairs, does not seem to be as well-grounded as the tenor of that letter suggests." The memorandum's contents and conclusions were reported on the front pages of both the *New York Times* and the *Washington Post*. A true and correct copy of that memorandum, titled "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information," is attached as Exhibit A to this Declaration.

10. The January 2006 memorandum on warrantless surveillance generated significant discussion, debate, and complaint, including objections from a sitting congressional committee chairman who was extremely upset about the conclusions and implications of the memorandum's findings, which raised questions regarding the publicly stated position of the Bush Administration on its warrantless surveillance program. Indeed, this committee chairman was

also disturbed by the very fact that CRS was analyzing public policy or legal issues relating to U.S. national intelligence activities. To the best of my knowledge, the authors of the 2006 warrantless surveillance memorandum were not chastised or disciplined by CRS management for making fact-based legal commentaries on a hot-button political issue of national significance, even though their memorandum raised critical questions regarding the official position of the Bush Administration's claims of its authorities in the intelligence surveillance area. To the contrary, I recall that their memorandum was viewed within CRS, at least, as a case example of outstanding non-partisan analysis on a highly sensitive and controversial public policy issue.

11. CRS is charged in the Legislative Reorganization Act of 1970 with being a "non-partisan" resource for the U.S. Congress. That act does not stipulate that CRS work products be neutral, but it does stipulate that CRS carry out its work "without partisan bias." From the very first year of my tenure, and throughout my career at CRS, the core guiding principle for all of our work was that we should at all times strive to be well-grounded in the facts of our issue areas of responsibility, and that our analysis and commentaries in our written products or in our oral presentations should be non-partisan. The key term, to me, is "non-partisan." Everyone working at CRS clearly understands that the agency is to maintain a strictly nonpartisan approach in the work we provide – that is, it should not contain any inherent bias toward any political party, politician, or political views on issues for which we are responsible. That is a concept that is longstanding and clearly understandable to CRS employees. Due to the important but frequently divisive nature of the public policy and legal issues with which CRS analysts must grapple, it is not realistic to expect well-researched and factually-based reports and memoranda by CRS experts on such subjects to be neutral and to avoid generating controversy among political figures who may disagree with the substance of a non-partisan CRS product. Director

Mulhollan's instructions to CRS staff about maintaining neutrality in their work was a vague and confusing directive lacking in appreciation of the political environment in which CRS analysts actually work, and the purpose for which CRS was established in the first place.

12. As far as I am aware, while some controversies and complaints were engendered in reaction to various CRS publications, these reactions did not undermine the effectiveness of CRS in its support of the Congress, or harm its reputation as a truly nonpartisan agency. CRS has received some complaints from members of Congress and their staffs of both major political parties. Yet members and staff from both parties continue to request and value CRS' assistance and support. To my knowledge, during my decades of service as a CRS analyst, the complaints lodged against CRS reports and memoranda were nearly always made because the analysis and commentaries in them in some manner did not lend support to the partisan view or political philosophy of the complaining staff person or member of Congress.

13. Director Mulhollan also altered the guidelines on outside speech and writing during his tenure at CRS, and I found those actions to be vague and confusing. Director Mulhollan issued a directive on outside speaking and writing that included a stipulation that employees exercise "good judgment" when deciding what to publish or speak about in our personal capacities outside of our official CRS duties. The context and manner in which Director Mulhollan set out his guidelines on such outside activities on our personal time led me to believe that his clear preference was that CRS employees should not engage in non-official public expression at all, and that his view of "good judgment" reflected this preference – contrary to the Library's regulation, which expressly encouraged public expression by employees, and which I understood to govern the behavior of CRS employees on this issue. Given his strongly noted desire to have CRS analysts avoid becoming party to public policy controversies, it is my

personal opinion that if Director Mulhollan had had the unrestricted legal authority to ban nearly all outside commentary by CRS analysts, even in their private capacities, in an effort to prevent them becoming associated with public policy controversies, he would have done so, and adopted the most restrictive policy permitted on the issue of outside speaking and writing by CRS employees.

14. I worked at CRS directly under Col. Davis during his entire tenure as Assistant Director of the Foreign Affairs, Defense and Trade Division (FDT). During this period, I never heard any CRS analyst or CRS manager say anything negative about Col. Davis' performance of his duties at the agency. He enjoyed the respect of his colleagues and supervisees, and I never saw any indication whatsoever that Col. Davis was not excellent in his management of the division.

15. I remember that when Col. Davis published his two pieces on Guantánamo Bay that are at issue in this lawsuit, Congress was out of session for the Veterans' Day holiday. CRS employees, including myself, were not in the office on Veterans' Day – a federal holiday – and the day when the two pieces Col. Davis wrote appeared in two separate newspapers. I read Col. Davis' brief letter to the editor in the *Washington Post* on Veterans' Day at my residence, but I did not see his Op-Ed piece in the *Wall Street Journal* on the day of its publication.

16. When I returned to my office following the Veterans' Day holiday, I immediately heard that CRS Director Mulhollan had gone ballistic over something published by Col. Davis. I cannot recall who first informed me about Director Mulhollan's displeasure. After hearing about the *Wall Street Journal* Op-Ed that was the subject of the Director's anger, I sought and read that article in my division's copy of that newspaper.

17. After I read the *Wall Street Journal* Op-Ed, I subsequently learned that Director Mulhollan planned to terminate Col. Davis' employment. I was shocked by the Director's very negative reaction to the two outside writing pieces. Nothing in either the letter to the editor of the *Washington Post* or the *Wall Street Journal* Op-Ed by Col. Davis implicated CRS, for Col. Davis had clearly identified himself in both of them solely as the former Chief Prosecutor for the military commissions at Guantánamo Bay. His conclusions were well-reasoned and based upon facts – facts that he knew better than anyone at CRS, and better than most U.S. citizens, given his responsibilities and the knowledge he had gained in his capacity as Chief Prosecutor. It was my impression that Col. Davis' *Wall Street Journal* Op-Ed was actually comparable to various congressional commentaries written by senior CRS analysts in published reports and memoranda during the course of their work at CRS. It gave an overview of key facts and issues surrounding the Guantánamo Bay detention site, examined the consequences and noted implications of policy decisions dealing with it, and came to Col. Davis' personal conclusions. Col. Davis' analysis in his Op-Ed was aided and enhanced in its credibility by the fact of his credentials and expertise on the topic that he had gained during his service as former Chief Prosecutor. The letter to the editor of the *Washington Post* was clearly written in Col. Davis' capacity as a private citizen, and its content and tone were consistent with letters written by private citizens to the editors of newspapers on significant matters of public policy on which they have strong personal views. I do not believe that any general reader of these pieces could have ascribed Col. Davis' opinions expressed in them to CRS or any official CRS position on the subject of these two pieces. Further, since I knew that Col. Davis was not responsible for CRS' work on Guantánamo and issues related to it, nothing about the pieces suggested any impropriety.

18. It is absolutely clear to me that nothing in either of Col. Davis' two opinion pieces was partisan in nature. He criticized equally policies and actions taken by both the Bush and Obama administrations, and noted the implications of the policy approach being taken. I submit that what Col. Davis wrote fairly characterized the actions and positions of U.S. public officials he mentioned, and his views were based upon facts. Moreover, he was contributing, in his private capacity, to an understanding of a current, and significant, public policy debate, and the implications of possible policy decisions by public officials.

19. My overall reaction to Col. Davis' outside writings in these two pieces was that nothing he had written was especially controversial, no more so than some high profile, publicly identified CRS reports or memoranda, such as the January 2006 memorandum on warrantless surveillance. Furthermore, in my experience, Col. Davis rarely acted as a public face or contact for CRS, so readers of his opinion pieces – even those readers serving in the Legislative branch – were not likely to know that he was a CRS employee. Within the core mission of CRS, the persons who actually produce published CRS research and analysis are the subject analysts and attorneys in the CRS research divisions. Our names and titles appear on the covers of CRS reports, and on the front pages of CRS memoranda. I understand this routine practice to be intended to identify and acknowledge the named authors as the key experts on the subject matter of these CRS products, and as the key persons to contact for additional assistance on the topics specified on the given CRS products. Furthermore, both the phone numbers and official email addresses of these CRS authors appear on CRS reports as well, as a matter of CRS policy. Assistant Directors at CRS manage the flow of division work, review that work for quality control, and as a general rule do not actually write or serve as the public face for CRS policy analysis or commentaries. Their contact information, whether their telephone numbers or official

email addresses, do not appear in CRS reports. This practice assists members of Congress and their staffs in identifying who at CRS are the experts on the subject matter in specific policy areas; namely the subject analysts or attorneys at CRS, not their division managers.

20. It was, and remains, my opinion that Director Mulhollan overreacted to Col. Davis' two publications. When CRS staff in my division became aware of the dispute between Col. Davis and Director Mulhollan, it was my impression that this knowledge – and any disruption it may have caused at CRS – stemmed from Director Mulhollan's overreaction to the publication of Col. Davis' opinion pieces, rather than the content of Col. Davis' speech. I do not recall any CRS analyst I spoke with around that time taking issue with the actual content of Col. Davis' writings, or their lack of an explicit CRS disclaimer. Indeed, had Director Mulhollan not precipitated a controversy by terminating Col. Davis over this outside writing, it is highly unlikely that the writings would have had any general disruptive effect on the work of CRS – and in particular on the issues relating to Guantánamo Bay, the subject focus of Col. Davis' two pieces.

21. It is my belief that others in my division shared, at that time, the view that termination of Col. Davis for writing these non-CRS opinion pieces was excessive. As an example, sometime during the week following the Veterans' Day holiday, my FDT section manager, Nathan Lucas, noted during a meeting with members of my CRS section that he had initially hoped that reconciliation between Col. Davis and Director Mulhollan could be achieved. But it was soon made clear to him, and to others in FDT management, that Director Mulhollan would not reverse his decision to terminate Col. Davis' employment.

22. I understand that Director Mulhollan has stated in the course of this lawsuit that Col. Davis' Op-Ed was improper because it lacked an explicit disclaimer. The CRS policy on use

of disclaimers in outside writing and speaking was not consistently applied or enforced during Director Mulhollan's tenure. I, myself, wrote a sharply-worded opinion piece on land use policy in Washington, D.C., which was prominently published in the Sunday *Washington Post's* "Outlook" section in January 1996. I am confident that a good number of my CRS colleagues read it. The piece criticized recommendations made by a U.S. National Park Service sponsored panel, praised President Andrew Jackson for his efforts in "staunchly opposing the argument that any state had the authority to nullify national laws with which it disagreed," and urged readers to take specific action. This commentary piece addressed at least one area of contested public policy, and it contained no disclaimer. It merely appeared with my full name as its author. No one at CRS ever indicated that the lack of disclaimer on that piece, or its strong tone and content, was problematic. A true and correct copy of that opinion piece is attached as Exhibit B to this Declaration.

23. It is my firm belief that if Col. Davis had added an explicit reference to CRS for the sole purpose of disclaiming any association with CRS and the views he stated, such a disclaimer would have served only to directly associate the piece with CRS. The disclaimer's absence actually obscured any association of the piece with CRS. Col. Davis appropriately signed the piece as a private citizen, and noted his prior role as Chief Prosecutor. It was clear to me that the piece was written in his personal capacity and based on his extensive knowledge of the various issues and their implications, which he gleaned from his work as Chief Prosecutor for the military commissions at Guantánamo Bay.

24. I understand that the defendants in this case have stated that just disclosing the date and subject of a congressional request from the CRS Mercury database is an unprecedented and dischargeable offense. In my experience, that does not seem correct. My understanding,

throughout my CRS career, has been that every CRS employee has a fundamental responsibility to protect the identity of any congressional requester for CRS assistance. The rules and directives, as I have understood them, throughout my decades of service at CRS, have been intended to protect from disclosure the name and office from which any request originated or any information that would link them with any specific request subject they place with CRS. I do not understand how it would be feasible for someone to identify a congressional requester solely from knowing the date and subject of a request. This is particularly true because numerous requests on the same topic frequently are placed with CRS when issues have a high profile in the media or Congressional agenda. Matters associated with military commissions and the use of Guantánamo Bay in Cuba for prisoners were clearly high interest subjects in the media and Congress, and had been since the Guantánamo facility began to be used by the U.S. to house overseas detainees.

25. I understand that the defendants in this case claim that Col. Davis' deletion of CRS materials from his CRS computer was a dischargeable offense. I was not aware of any clear CRS policy directive prohibiting this practice. For example, during my tenure at CRS I occasionally received a new computer from CRS technical staff. Whenever I received a new one, I always asked the technical staff to quickly wipe all files from the disk drive on my old computer, which still contained various confidential files related to my CRS work. I believed this to be a routine procedure, and a good security practice to protect the confidentiality of the CRS work-related information contained on the old drive. I also routinely deleted quantities of emails from my CRS email account, as messages would build up over time.

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on June 22, 2013

Richard F. Grimmett

RICHARD F. GRIMMETT