

December 22, 2017

Via a Federal Express and Email

United States Africa Command
ATTN: FOIA Requester Service Center
Unit 29951
APO AE 09751

HQ USSOCOM
FOIA Requester Service Center
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Stephen Kelley
Acting Director, Information Management Division
Office of the Director of National Intelligence
Washington, D.C. 20511

Defense Intelligence Agency
ATTN: FAC2A1 (FOIA)
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Washington, DC 20301-7400

U. S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208

Re: FREEDOM OF INFORMATION ACT REQUEST/ Expedited Processing and Fee Waiver Requested

To Whom It May Concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Department of Defense (“DOD”) implementing regulations, 32 C.F.R. § 286.1, *et seq.*, the Department of State (“DOS”) implementing regulations, 22 C.F.R. § 171.1, *et seq.*, the Office of the Director of National Intelligence implementing regulations, 32 C.F.R. § 1700.1, *et seq.*, the President’s Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sept. 29, 2009). The Request is submitted by the Center for Constitutional Rights (“CCR”).

This Request seeks information relating to the United States' counterterrorism operations in Central and West Africa. U.S. military presence in Africa has increased dramatically in recent years. According to official estimates, the U.S. has more than 6,000 troops stationed throughout the continent, as well as a wide-ranging network of military bases.¹ Nearly 3,500 U.S. military missions are underway in roughly 20 African countries.² The expansion of the U.S. military footprint in Africa indicates a significant interest in that region as a new frontier in the "War on Terror." Yet, despite this growing presence, little is publicly known about the nature of U.S. counterterrorism operations on the continent.

U.S. military bases in Africa are reportedly used for a variety of counterterrorism operations, including staging ground raids, conducting surveillance, and launching armed drones.³ Although Camp Lemonnier in Djibouti (in East Africa) has previously been the locus of U.S. military activity in Africa,⁴ a shift is occurring to Central and West African outposts. Recent reporting shows that the U.S. is investing hundreds of millions of dollars to set up bases throughout Central Africa that can be used to launch armed drones and conduct other counterterrorism operations.⁵

The largest military outpost outside of Djibouti is Niger, which according to official estimates houses 800 U.S. troops.⁶ The U.S. government recently signed a "Memorandum of Understanding" with the Nigerien government permitting it to fly armed drones out of an air base in the capital city of Niamey.⁷ The Niger deployment would be only the second time that armed drones have been stationed and used in Africa.⁸ By 2018, the U.S. plans to launch armed drones from a base in Agadez, Niger.⁹ The Pentagon intends for Niger to serve as a permanent, regional hub for combatting "violent extremist organizations"¹⁰ in Central and West Africa, and

¹ Nick Turse, *The U.S. Military is Conducting Secret Missions all Over Africa*, Vice News, Oct. 25, 2017, <http://bit.ly/2AoM8XO>; Kathryn Watson, *Where does the U.S. have Troops in Africa, and Why?*, CBS News, Oct. 23, 2017, <http://cbsn.ws/2yKkEJV>.

² Greg Myer, *The U.S. Military in Africa: A Discreet Presence in Many Places*, NPR.org, Oct. 20, 2017, <http://n.pr/2i6qWgX>.

³ See, e.g., Arwa Damon, Brent Swails & Brice Laine, *This City is a Tinderbox, and the U.S. is Building a Drone Base Next Door*, CNN.com, Jul. 21, 2017, <http://cnn.it/2uFwkQi>; Joseph Trevithick, *A Guide to the Pentagon's Shadowy Network of Bases in Africa*, The Drive, Mar. 1, 2017, <http://bit.ly/2p49u2R>; Nick Turse, *You Might Not Know Where Chad Is, But the U.S. Military Has Big Plans For It*, Mother Jones, Nov. 21, 2014, <http://bit.ly/2ATUARZ>.

⁴ See Nick Turse, *Target Africa: The U.S. Military's Expanding Footprint in East Africa and the Arabian Peninsula*, The Intercept, Oct. 15, 2015, <http://bit.ly/1X7SEXM> (Camp Lemonnier is the only military installation in Africa officially recognized by the Pentagon. It houses more than 4,000 U.S. troops and has been used to launch drone strikes and special operations raids in Yemen and Somalia.); Eric Schmitt, *Using Special Forces Against Terrorism, Trump Seeks to Avoid Big Ground Wars*, N.Y. Times, Mar. 19, 2017, <http://nyti.ms/2mG4vPv>.

⁵ Nick Turse, *Secret U.S. Military Documents Show a Constellation of American Military Bases Across Africa*, The Nation, Apr. 27, 2017, <http://bit.ly/2qfJ8KU>.

⁶ Helene Cooper & Eric Schmitt, *Niger Approves Armed U.S. Drone Flights, Expanding Pentagon's Role in Africa*, N.Y. Times, Nov. 30, 2017, <http://nyti.ms/2zhCozZ>.

⁷ *Id.*

⁸ *Id.*

⁹ Arwa Damon, Brent Swails & Brice Laine, *This City is a Tinderbox, and the U.S. is Building a Drone Base Next Door*, CNN.com, Jul. 21, 2017, <http://cnn.it/2uFwkQi>.

¹⁰ See 2017 United States Africa Command 2017 Posture Statement, <http://bit.ly/2Bif2TI>.

it is surrounded by a network of supporting U.S. military stations.¹¹ For example, N’Djamena, Chad houses a military base used for U.S. counterterrorism missions,¹² and 300 U.S. troops are stationed at a base in Garoua, Cameroon, which is used to fly surveillance and possibly armed drones.¹³ Senegal has signed a Defense Cooperation Agreement with the U.S., which would allow the country to serve as a military and intelligence anchor for the fight against “extremist organizations” in the region.¹⁴ Special Operations advisors have been deployed to Nigeria in recent years to aid in the fight against Boko Haram (which the U.S. characterizes as a local affiliate of al-Qaeda), and that country’s government has granted the U.S. permission to conduct drone surveillance over its territory.¹⁵ The U.S. is targeting “violent extremist organizations” in Mali, and news reports reveal that U.S. Special Operations forces cross in and out of the country when participating in counterterrorism ground operations.¹⁶

The expansion of military bases in Africa has been accompanied by an increase in U.S. troops in the region. Official documents assert that these troops are stationed throughout the continent to “support” African partners in conducting counterterrorism operations, but the actual nature of their role remains unclear.¹⁷ The surprised public reaction to the deaths of four U.S. service members in Niger—including by members of Congress stating that they had no idea the U.S. was operating there—highlights the lack of transparency surrounding U.S. military presence and activity in Central and West Africa.¹⁸ Whereas official documents indicate that U.S. troops are assisting in the fight against regional extremist groups,¹⁹ there is little public understanding of which groups they are fighting, the extent to which U.S. troops engage in combat, the impact of these operations, and the legal and political arrangements governing U.S. counterterrorism activities.

Concurrent to the surge in U.S. troops, bases, and counterterrorism operations in Central and West Africa is the relaxation of the rules governing the use of military force by the United States. Policy standards developed to limit civilian casualties have been loosened in Somalia, where

¹¹ Joseph Trevithick, *A Guide to the Pentagon’s Shadowy Network of Bases in Africa*, The Drive, Mar. 1, 2017, <http://bit.ly/2p49u2R>.

¹² Nick Turse, *You Might Not Know Where Chad Is, But the U.S. Military Has Big Plans For It*, Mother Jones, Nov. 21, 2014, <http://bit.ly/2ATUARZ>.

¹³ Joshua Hammer, *Hunting Boko Haram: The U.S. Extends its Drone War Deeper into Africa with Secretive Base*, The Intercept, Feb. 25, 2016, <http://bit.ly/1UrkZIZ>.

¹⁴ William M. Arkin, *America’s “War on Terror” Gains a New Ally: Tiny Senegal*, Vice News, Jun. 18, 2016, <http://bit.ly/2ApL5cg>.

¹⁵ Eric Schmitt & Dionne Searcey, *U.S. Plans to Put Advisors on Front Lines of Nigeria’s War on Boko Haram*, N.Y. Times, Feb. 25, 2016, <http://nyti.ms/2jtKn3r>; Paul D. Shinkman, *What the U.S. is Really Doing in Nigeria*, U.S. News, Jul. 8, 2014, <http://bit.ly/2jgSi5b>.

¹⁶ Sudarsan Raghavan, *Hours Before Death in Niger, U.S. Soldiers were Targeting Militants in Mali*, Washington Post, Nov. 5, 2017, <http://wapo.st/2CpvJSU>.

¹⁷ *Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate*, Dec. 11, 2017, <http://bit.ly/2CojSoa>.

¹⁸ Daniella Diaz, *Key Senators Say they Didn’t Know U.S. had Troops in Niger*, CNN.com, Oct. 23, 2017, <http://cnn.it/2y0ajJp>.

¹⁹ See 2017 United States Africa Command 2017 Posture Statement, <http://bit.ly/2Bif2TI>.

U.S. forces are conducting regular drone strikes and ground operations.²⁰ The recent loosening of limits on U.S. drone strikes and commando raids more generally paves the way for increased operations in Libya, which has not officially been designated a combat zone but where the U.S. has been targeting militants for years.²¹ In 2016 alone, the U.S. conducted over 500 airstrikes in Libya.²² Further, U.S. Special Operations forces are more frequently being used to carry out counterterrorism operations in Africa, signaling that the proliferation of military bases is accompanied by an increase in ground operations.²³

I. Requested Records

CCR requests records pertaining to the agreements underlying and scope of U.S. counterterrorism activities in several key Central and West African countries where U.S. military interest and/or activity has been reported. Specifically, we request:

1. All agreements between the U.S. and Nigerien governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations²⁴ in and/or from Niger, including but not limited to:
 - a. The “Memorandum of Understanding” pertaining to the use of U.S. military bases in Niamey and Agadez, reported by the New York Times on November 30, 2017.²⁵
2. All agreements between the U.S. and Chadian governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations in and/or from Chad.
3. All agreements between the U.S. and Cameroonian governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations in and/or from Cameroon.
4. All agreements between the U.S. and Senegalese governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations in and/or from Senegal, including but not limited to:
 - a. The current Defense Cooperation Agreement between the U.S. and Chad.²⁶
5. All agreements between the U.S. and Malian governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations in and/or from Mali.

²⁰ Charlie Savage & Eric Schmitt, *Trump Eases Combat Rules in Somali Intended to Protect Civilians*, N.Y. Times, Mar. 30, 2017, <http://nyti.ms/2oes1bI>.

²¹ Charlie Savage & Eric Schmitt, *Trump Poised to Drop Some Limits on Drone Strikes and Commando Raids*, N.Y. Times, Sept. 21, 2017, <http://nyti.ms/2jQcYn0>.

²² Nick Turse, *The U.S. Military is Conducting Secret Missions all Over Africa*, Vice News, Oct. 25, 2017, <http://bit.ly/2AoM8XO>.

²³ Eric Schmitt, *Using Special Forces Against Terrorism, Trump Seeks to Avoid Big Ground Wars*, N.Y. Times, Mar. 19, 2017, <http://nyti.ms/2mG4vPv>.

²⁴ As used throughout the Request, the term “armed counterterrorism operations” includes, but is not limited to, ground operations, air strikes, and armed drone strikes in which U.S. forces participate targeting “violent extremist organizations” (as referenced in the 2017 AFRICOM Posture Statement, <http://bit.ly/2BIf2TI>) in the region.

²⁵ Helene Cooper & Eric Schmitt, *Niger Approves Armed U.S. Drone Flights, Expanding Pentagon’s Role in Africa*, N.Y. Times, Nov. 30, 2017, <http://nyti.ms/2zhCozZ>.

²⁶ William M. Arkin, *America’s “War on Terror” Gains a New Ally: Tiny Senegal*, Vice News, Jun. 18, 2016, <http://bit.ly/2ApL5cg>.

6. All agreements between the U.S. and Nigerian governments pertaining to the authority of the U.S. to conduct armed counterterrorism operations in and/or from Nigeria, including but not limited to:
 - a. The agreement relating to U.S. permission to conduct surveillance over Nigerian territory.²⁷
7. All U.S. government agreements with private contractors pertaining to the support of armed U.S. counterterrorism operations conducted in and/or from Niger, Chad, Cameroon, Senegal, Mali and/or Nigeria.
8. Information pertaining to:
 - a. The number of U.S. troops stationed in Niger, Chad, Cameroon, Senegal, Mali and Nigeria, respectively;
 - b. The number of armed counterterrorism operations involving U.S. participation carried out in and/or from Niger, Chad, Cameroon, Senegal, Mali and Nigeria, respectively;
 - c. The number of total casualties, including civilians, resulting from armed U.S. counterterrorism operations in Niger, Chad, Cameroon, Senegal, Mali and Nigeria, respectively;
 - d. The number of U.S. troop casualties resulting from armed U.S. counterterrorism operations in Niger, Chad, Cameroon, Senegal, Mali and Nigeria, respectively.

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e., Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields; and
- With any other metadata preserved.

II. The Requester

CCR is a non-profit, public interest, legal and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of U.S. and international law, including issues concerning U.S. counterterrorism and national security policy domestically and abroad. CCR’s diverse dockets include litigation and advocacy in the areas of national security, government misconduct and racial justice, and international human rights. In connection with its work, CCR often litigates against and otherwise participates in meetings, discussions and/or negotiations with senior officials in the White House, including the National

²⁷ Paul D. Shinkman, *What the U.S. is Really Doing in Nigeria*, U.S. News, Jul. 8, 2014, <http://bit.ly/2jgSi5b>.

Security Council staff, the Department of Defense, the FBI, and the Department of State. CCR is also a member of national coalitions and networks comprised of non-government organizations that meet with members of Congress to discuss issues concerning federal law and policy. CCR also publishes newsletters, know-your-rights handbooks, legal analysis of current issues, and other similar materials for public dissemination, including concerning abuses of executive power and Department of Justice policy. These and other materials are available to the general public through CCR's Development, Communications, and Legal & Advocacy Departments. CCR operates a website, <https://ccrjustice.org>, which addresses the issues on which CCR works. The website includes materials on topical issues and materials concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases, has a social media reach of more than 85,000 followers, operates a listserv of more than 50,000 members, and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work.

III. Expedited Processing

CCR requests expedited processing of this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b); 32 C.F.R. § 1700.12. There is a "compelling need" for the requested records because the information requested is urgently needed by an organization primarily engaged in disseminating information to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2); 32 C.F.R. § 1700.12(c)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i). There is a compelling public interest in fully understanding the scope of U.S. military presence in Central and West Africa, in understanding the extent and nature of armed U.S. counterterrorism operations in the region, and in understanding the agreements with key Central and West African countries governing the use of U.S. military bases and the activities of U.S. forces in their respective territories.

The records requested here are urgently needed to inform the national debate about actual or alleged federal government activity; specifically, the U.S. military's presence in Africa and the armed counterterrorism operations conducted in Central and West African countries. Public interest in this issue has grown in recent months, especially following the deaths of four U.S. service members during an ambush in Niger. Members of Congress have called for public hearings about the presence of U.S. military personnel in Africa and what their mission is.²⁸ The incident has also reignited debates in the Senate about congressional authorization for the use of military force overseas, including defining the scope of military operations in Africa.²⁹ The ambush also generated a slew of news articles seeking to explain the U.S. military's presence and role in Africa, and continued reporting on the issue, including the recent New York Times

²⁸ Patricia Zengerle, *Fatal Niger Operation Sparks Calls for Public Hearings in Congress*, Reuters, Oct. 26, 2017, <http://reut.rs/2BBYX4i>.

²⁹ See, e.g., Samantha Raphelson, *Niger Ambush Reignited Senate Debate Over Authorization of Military Force*, NPR.org, Oct. 30, 2017, <http://n.pr/2BzHkBZ>; Elana Schor & Connor O'Brien, *McCain Calls for War Powers Debate After Niger Attack*, Politico, Oct. 23, 2017, <http://politi.co/2COBWef>.

article on the Memorandum of Understanding between the U.S. and Niger, makes it a “breaking news story of general public interest.”³⁰

IV. Fee Waiver

CCR requests a waiver of search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because it “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17(a); 32 C.F.R. § 1700.6(b). CCR meets these requirements because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to CCR’s expertise in the subject area and ability to convey the information; CCR’s primary interest is in disclosure; and it has no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), CCR qualifies as a “representative[] of the news media,” defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.* § 552(a)(4)(A)(ii).

As described above, CCR is a non-profit organization with a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including abuses of executive power and Department of Defense policy. CCR has undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public’s understanding of military presence and operations in Africa. Access to this information is crucial for CCR and the communities it serves to evaluate such actions and their potential detrimental effects. As explained, CCR is an advocacy organization that publishes reports, conducts know-your-rights and other informational trainings, and engages in litigation.

Also as stated above, CCR has no commercial interest in this matter. CCR will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”).

In the alternative, CCR requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a

³⁰ *See, e.g.*, Kathryn Watson, *Where does the U.S. have Troops in Africa, and Why?*, CBS News, Oct. 23, 2017, <http://cbsn.ws/2yKKEJV>; John Haltiwanger, *How Many Troops Does the U.S. Have in Africa? Top Senators Didn’t Know Military Was in Niger*, Newsweek, Oct. 23, 2017, <http://bit.ly/2ld76oR>; Les Neuhaus, *U.S. Military Stretched Thin in 50 African Nations*, Observer, Dec. 01, 2017, <http://bit.ly/2BFGbGC>; W.J. Hennigan, *The New American Way of War*, Time, Nov. 30, 2017, <http://ti.me/2AJQRXg>.

representative of the news media.”). If no fee waiver is granted and the fees exceed \$250.00, please contact CCR’s undersigned counsel to obtain consent to incur additional fees.

V. Conclusion

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b); 32 C.F.R. § 1700.12(b).

If the Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

We also request that you provide an estimated date on which you will complete processing of this request. *See* 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish all responsive records to: Noor Zafar, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,

/s/ Pardiss Kebriaei
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