IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, *PRO SE*	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
UNITED STATES OF AMERICA; et al.	)	Case: 1:18-cv-00777
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

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PRELIMINARY STATEMENT

This case arises out of Plaintiff's Freedom of Information Act, 5 U.S.C. § 552 request ("FOIA") for WNP-136 "Guidance on Release of Information Relating to the Potential for an Israeli Nuclear Capability." Defendant DOE, coordinating with DOS, redacted WNP-136 almost entirely before its release to Plaintiff on February 23, 2015.

Defendants cite FOIA exemptions 5 U.S.C. § 552(b)(1) and 5 U.S.C. § 552(b)(7)(E) as the basis for their redactions. Both are inconsistent with the FOIA and Executive Order 13526.

The Court should deny Defendant's motion for summary judgement and order the agency to release the redacted materials for five reasons. First, the agency cannot establish that WNP-136 falls within the purview of Exemption 1. Second, Defendants cannot establish that WNP-136 falls within the purview of Exemption 7(E). Third, Defendants have not provided compelling evidence to show that WNP-136's core purpose is anything but a mechanism to violate the Arms Export Control Act, specifically 22 USC §2799aa-1. Fourth, Defendants have not provided evidence that they have the required authority to reclassify information that has already been properly released to the public. Fifth, Defendants allegation that Plaintiff did not follow proper FOIA procedure is false. To the contrary, it is clear the Defendants failed to follow FOIA referral procedure.

BACKGROUND

I. Defendants use WNP-136 to improperly withhold U.S. government information about Israel's nuclear weapons under FOIA

Over nearly a decade and a half using FOIA and Mandatory Declassification Reviews to obtain U.S. government information about Israel's nuclear weapons program, Plaintiff has increasingly run into roadblocks in the form of delays, improper redactions and misapplication of FOIA exemptions to thwart the release of information. These obstacles are mainly to thwart sunshine rather than protect national security. At their core, the obstacles seek to prevent the release of information to conceal violations of law, inefficiency, administrative error and to prevent embarrassment.

According to the CIA, in the 1960s, clandestine operatives sent by the government of Israel in collaboration with a group of U.S. supporters, stole enough U.S. government owned weapons-grade uranium from a Pennsylvania based U.S. Department of Energy contractor—the Nuclear Materials and Equipment Corporation (NUMEC)—to build several nuclear weapons. This well-documented incident was supremely embarrassing to the U.S. Department of Energy, which was ultimately responsible for safeguarding material at NUMEC. DOE's investigators admitted in private that weapons-grade uranium from NUMEC had ended up in Israel. This diversion and Israel's subsequent status as a nuclear weapons state has also proven to be supremely embarrassing to the U.S. Department of State, which has long self-designated as a world champion of the Treaty on the Non-

Proliferation of Nuclear Weapons.

Although the U.S. Department of Energy publicly neither confirms nor denies that the illegal NUMEC diversion took place, officials at CIA, FBI, individual members of Congress and other federal agencies concluded that the diversion did indeed take place.

The diversion and matters concerning Israel's nuclear arsenal have been extremely problematic for both the White House and Congress. Both are highly sensitive to pressures exerted by Israel's lobby in the United States, which exerts influence mainly through campaign contributions and mass media pressure. Neither the White House nor Congress wish to suffer political backlash by casting a spotlight on or calling into question Israel's nuclear weapons program. However, this does not mean that facts about Israel's nuclear weapons program, already released to the public in the proper way, are classified national defense information or in any way "reclassifiable" by instruments such as WNP-136.

The Arms Export Control Act restricts and conditions U.S. foreign aid to countries that have not signed the Nuclear Non-Proliferation Treaty, yet are known to have nuclear weapons programs under 22 USC §2799aa-1*: Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations.* The amendments were authored by Senator Stuart Symington, a close confidant of NPT champion President John F. Kennedy, and Senator John Glenn, who was extremely concerned about the lack of due process and criminal prosecutions over the illegal NUMEC diversion and who visited the CIA and National Security Council seeking accountability over the incident. *NUMEC*

Material Unaccounted For, National Security Council, November 27, 1979.[1]

Although nearly entirely redacted, much can readily be deduced about the purpose and fact that WNP-136 contains no information that can be withheld under FOIA from its title and how it has been used. The classification guide's title, "Guidance on Release of Information Relating to the Potential for an Israeli Nuclear Capability" clearly reveals that WNP-136 is all about how U.S. federal agency employees and contractors must handle information about Israel's nuclear weapons program that is in possession of the United States government. It therefore stands to reason that the Department of State information withheld under Exemption 1 simply states something to the effect that "The United States considers all information about the potential for an Israeli nuclear capability to be classified."

II. Plaintiff sought full public disclosure of WNP-136 after it was used to unlawfully dismiss a DOE nuclear non-proliferation researcher

The classification bulletin's first publicly known use was against former Los Alamos National Laboratory nuclear policy specialist James Doyle. Doyle wrote the following sentence in an article published in a scholarly journal.[2]

[1] https://israellobby.org/numec/11271979_brezinski_denial.pdf
[2] James E. Doyle, "Why Eliminate Nuclear Weapons?" Survival, vol. 55, no. 1, February-March 201, pp-7-34 https://www.tandfonline.com/doi/abs/10.1080/00396338.2013.767402.

"Nuclear weapons did not deter Egypt and Syria from attacking Israel in 1973, Argentina from attacking British territory in the 1982 Falklands War or Iraq from attacking Israel during the 1991 Gulf War."

Although the article had passed a classification review, it was referred to DOE classification officials for a second review because of its two factual references to Israel as a known nuclear weapons power. Doyle's pay was then cut, his home computer searched, and he was fired. See "Nuclear weapons lab employee fired after publishing scathing critique of the arms race. Los Alamos lets a 17-year employee go after retroactively classifying his published article."[3]

From this incident we can infer that the content protected from release under 7(E) is about what consequences await federal agency employees and contractors who accurately deliver information, in any format, about Israel's nuclear weapons program to the American public. WNP-136 probably says, in more technical terms, "we will raid your home." "We will search your computer." "We will fire you." "We may also prosecute you for leaking classified information." The information protected under 7(E) likely says all that, because it is what happened to one DOE employee after "violating" WNP-136 by "leaking" already well-known facts about Israel's nuclear weapons program.

WNP-136 therefore advances two false claims while hiding them from public scrutiny

[3] Douglas Birch, The Center for Public Integrity, July 31, 2014 https://www.publicintegrity.org/2014/07/31/15161/nuclearweapons-lab-employee-fired-after-publishing-scathing-critique-arms-race

through the invocation of secrecy classification. The first is that the existence of Israel's nuclear weapons program is secret, classified, U.S. national security information. WNP-136 then self-referentially claims that because Israel's nuclear weapons program is classified NSI, and WNP-136 is about "protecting" that secret, the contents of WNP-136 are also classified NSI. In other words, WNP-136 is "self-classifying."

The Defendants have not yet addressed the core challenge to their withholding the contents of WNP-136 despite multiple opportunities to do so. The fact of Israel's nuclear weapons has already been acknowledged and properly disclosed, authoritatively, by many U.S. officials from different agencies. It is simply not a secret, and therefore any secret "enforcement" mechanisms that build upon that mistaken assumption are also not classifiable.

ARGUMENT

The Freedom of Information Act, 5 U.S.C. § 552, was enacted "to facilitate public access to Government documents" and "was designed to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Citizens for Responsibility and Ethics in Washington v. DOJ*, 746 F.3d 1082, 1088 (D.C. Cir. 2014) The underlying purpose of the FOIA is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *EPIC v. DHS*, 999 F. Supp. 2d 24, 29 (D.D.C. 2013) (quoting John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989)). "In enacting FOIA, Congress struck the

balance it thought right—generally favoring disclosure, subject only to a handful of specified exemptions—and did so across the length and breadth of the Federal Government." *Milner v. Dep't of the Navy*, 562 U.S. 562, 571 n.5 (2011). As a result, the FOIA "mandates a strong presumption in favor of disclosure." *EPIC v. DOJ*, 511 F. Supp. 2d 56, 64 (D.D.C. 2007) (internal citations omitted).

The FOIA specifies that certain categories of information may be exempt from disclosure, "[b]ut these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 813 (D.C. Cir. 2008). Therefore FOIA exemptions "must be narrowly construed." Id. "The statute's goal is broad disclosure, and the exemptions must be given a narrow compass." *Milner*, 562 U.S. at 563 (internal citations omitted). Furthermore, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B); see also *EPIC v. DHS*, 384 F. Supp. 2d 100, 106 (D.D.C. 2005). Where the government has not carried this burden, summary judgment in favor of the Plaintiff is appropriate. *DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980).

I. Standard of Review

Summary judgment may be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact is one that would change the outcome of the litigation." *EPIC v. DHS*, 999 F. Supp. 2d 24, 28 (D.D.C. 2013). FOIA cases are

typically decided on motions for summary judgment. Id.; see *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). A district court reviewing a motion for summary judgment in a FOIA case "conducts a de novo review of the record, and the responding federal agency bears the burden of proving that it has complied with its obligations under the FOIA." *Neuman v. United States*, 70 F. Supp. 3d 416, 421 (D.D.C. 2014); CREW, 746 F.3d at 1088; see also 5 U.S.C. § 552(a)(4)(B). The court must "analyze all underlying facts and inferences in the light most favorable to the FOIA requester," and therefore "summary judgment for an agency is only appropriate after the agency proves that it has 'fully discharged its [FOIA] obligations.'" Neuman, 70 F. Supp. 3d at 421. In some cases, the agency may carry its burden by submitting affidavits that "describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor evidence of agency bad faith." *ACLU v. DOJ*, ___ Fed App'x ___, 2016 WL 1657953, at *1 (D.C. Cir. Apr. 21, 2016).

II. Plaintiff is entitled to summary judgement

The FOIA provides that every government agency shall "upon any request which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). Despite the general "pro disclosure purpose" of the statute, *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004), the FOIA provides for nine exemptions. These exemptions outline

"specified circumstances under which disclosure is not required." *Gosen v. Citizen and Immigration Serv.*, 75 F. Supp. 3d 279, 286 (D.D.C. 2014); see 5 U.S.C. § 552(b). In a FOIA case, the "agency bears the burden of establishing that an exemption applies." *PETA v. NIH*, 745 F.3d 535 (D.C. Cir. 2014). The agency may "meet this burden by filing affidavits describing the material withheld and the manner in which it falls within the exemption claimed." *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987). However, it is not sufficient for the agency to provide "vague, conclusory affidavits, or those that merely paraphrase the words of a statute." *Church of Scientology of Cal., Inc. v. Turner*, 662 F.2d 784, 787 (D.C. Cir. 1980) (per curiam). When an agency invokes an exemption, "it must submit affidavits that provide the kind of detailed, scrupulous description [of the withheld documents] that enables a District Court judge to perform a de novo review." *Brown v. FBI*, 873 F. Supp. 2d 388, 401 (D.D.C. 2012) (internal quotation marks omitted).

A. Defendants are improperly withholding WNP-136 under Exemption 1

Defendants have waived their right to invoke Exemption 1 and E.O. 13526 in WNP-136 because the fact that Israel has a nuclear weapons program has already been officially disclosed. Defendants incorrectly assert, "Plaintiff's claims amount to nothing more than bare assertions and speculation about bad intent based on statements by public officials external to the Executive Branch about the general topic of Israel and nuclear proliferation."

The standard for what does and does not constitute official disclosure is strict. According to the Department of Justice "Courts have carefully distinguished between bona

fide declassification action or official release on the one hand and unsubstantiated speculation lacking official confirmation on the other, refusing to consider classification information to be in the public domain unless it has been officially disclosed." Source: Exemption 1, Department of Justice Guide to the Freedom of Information Act, July 23, 2017.[4]

The District Court for the Southern District of New York has ruled that general comments from an Executive Branch official do not meet the exacting standard required to find waiver in matters involving national security. *New York Times Co. v. DOJ,* Nos. 11 Civ. 9335, 12 Civ. 794, 2013 WL 50209, at *21 (S.D.N.Y. Jan. 3, 2012) (concluding that for certain records "there has been no official disclosure of sufficient exactitude to waive the Government's right" to withhold records).

In the present action, the Defendant's claim that WNP-136 contains Exemption 1 material does not stand. There have been too many authoritative U.S. government declassification and disclosure releases in both the past and recent years confirming the existence of Israel's nuclear weapons program, particularly since Israel has been increasingly revealed as a nuclear proliferation threat of high concern to the U.S., generating ever greater volumes of U.S. government reports and analysis, to claim—as Defendants do—that Israel's nuclear weapons program is merely a "potential" capability, and a classified secret. The following are authorized, declassified excerpts referenced in the complaint (ECF 1) from the

[4] https://www.justice.gov/oip/doj-guide-freedom-information-act-0

formerly top-secret, declassified U.S. Central Intelligence Agency 1974 Special National Intelligence Estimate, *Prospects for Further Proliferation of Nuclear Weapons* [known hereafter as the 1974 CIA SNIE][5]

1. "We believe that Israel already has produced and stockpiled a small number of fission weapons. Our judgement is based on Israeli acquisition of large quantities of uranium, partly by clandestine means; the ambiguous nature of Israeli efforts in the field of uranium enrichment; and Israel's large investment in a costly missile system designed to accommodate nuclear warheads." 1974 CIA SNIE, page 2.
2. "The Israelis have close ties both to Taipei and to South Africa and we cannot rule out bilateral or trilateral cooperation in the nuclear weapons field." 1974 CIA SNIE, page 41.

The CIA's official confirmation of Israel's nuclear weapons status was authorized, specific, unambiguous and authoritative enough for the *New York Times* in 1978 to publish a front-page story titled, *C.I.A. said in 1974 Israel had A-Bombs*.[6]

Later, the CIA's conclusion that Israel might attempt to sell nuclear-tipped Jericho missiles to apartheid South Africa was independently confirmed by Council on Foreign Relations scholar Sasha Polakow-Suransky. Polakow-Suransky confirmed in 2012 that in

[5] The 1974 CIA SNIE released under FOIA to the National Security Archive in 2008 is available online at https://nsarchive2.gwu.edu/NSAEBB/NSAEBB240/snie.pdf, The 2017 CIA FOIA release of additional information to IRmep is available online at: http://israellobby.org/nukes/2017snie.pdf

[6] David Burnham, CIA Said in 1974 Israel Had A-Bombs: *Secret Study Asserted Uranium Used for Weapons was Obtained 'by Clandestine Means*,' New York Times, January 26, 1978

1975 Israel's then-defense minister Shimon Perez offered nuclear-tipped Jerichos "in three sizes" in a sales contract to apartheid South Africa's PW Botha.[7]

Restating the CIA's official position that Israel was a nuclear weapons state at a public 1974 "state of the world" briefing to 150 members of the American Institute of Aeronautics and Astronautics, CIA Director of Science and Technology Carl Duckett publicly stated unequivocally and specifically that Israel "has ten to 20 nuclear weapons ready and available for use."[8]

In testimony given by Duckett to the U.S. Nuclear Regulatory Commission and released under FOIA, Duckett stated that within a National Intelligence Estimate drafted in 1968, "in it was the conclusion that Israel had nuclear weapons." *Inquiry into the testimony of the Executive Director for Operations*, Volume III, Interviews, February 1978, U.S. Nuclear Regulatory Commission.[9]

In 1999, the U.S. Air Force Counterproliferation Center of the Air War College at Maxwell Air Base published an unclassified official report titled "The Third Temple's Holy of Holies: Israel's Nuclear Weapons."[10] Warner D. Farr, LTC, U.S. Army, *The Third Temple's Holy of Holies: Israel's Nuclear Weapons*. The Counterproliferation Papers, Future Warfare Series

[7] Revealed: How Israel Offered to Sell South Africa nuclear weapons." The Guardian, 5/24/2010 https://www.theguardian.com/world/2010/may/23/israel-south-africa-nuclear-weapons
[8] Fialka, John J. *The American Connection: How Israel Got the Bomb* The Washington Monthly, January 1979 p 52
[9] http://israellobby.org/numec/CIA%20Director%20Operations.pdf
[10] http://www.au.af.mil/au/awc/awcgate/cpc-pubs/farr.htm

No. 2, USAF counterproliferation Center, Air War College, Air University, Maxwell Air Force Base, Alabama. Excerpts from the Air Force report concluded:

1. "One other purpose of Israeli nuclear weapons, not often stated, but obvious, is their 'use' on the United States."
2. "They have been used in the past to ensure America does not desert Israel under increased Arab, or oil embargo, pressure and have forced the United States to support Israeli diplomatically against the Soviet Union."
3. "Israel used their existence to guarantee a continuing supply of American conventional weapons, a policy likely to continue."
4. "Regardless of the true types and numbers (see Appendix A) of Israeli nuclear weapons, they have developed a sophisticated system, by myriad methods, and are a nuclear power to be reckoned with."

The following are officially released excerpts from the 1987 unclassified U.S. Department of Defense report authorized for release under FOIA in 2015.[11] Edwin S. Townsley and Clarence A. Robinson *Critical Technology Assessment in Israel and NATO Nations* April, 1987, Office of the Under Secretary of Defense.

[11] http://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/NCB/12-F-0405_15-F-1370_Critical_Technology_Assessment_In_Israel_And_NATO_Nations.pdf

a. Israelis were within their nuclear weapons program "developing the kind of codes which will enable them to make hydrogen bombs. That is, codes which detail fission and fusion processes on a microscopic and macroscopic level."

b. Such research was taking place in Israeli nuclear weapons making facilities similar to the major US nuclear weapons development sites. "The SOREQ and the Dimona/Beer Shiva facilities are the equivalent of our Los Alamos, Lawrence Livermore and Oak Ridge National Laboratories. The SOREQ center runs the full nuclear gamut of activities from engineering, administration and non-destructive testing to electro-optics, pulsed power, process engineering and chemistry and nuclear research and safety. This is the technology base required for nuclear weapons design and fabrication."

c. Israel's facilities at the time were stunningly advanced. "The capability of SOREQ to support SDIO [Strategic Defense Initiative or 'Star Wars'] and nuclear technologies is almost an exact parallel of the capability currently existing at our National Laboratories."

This official confirmation of Israel's nuclear status was unambiguous and authoritative enough for *The Nation* to publish a story titled, "It's Official: The Pentagon Finally Admitted That Israel Has Nuclear Weapons, Too: After five decades of pretending

otherwise, the Pentagon has reluctantly confirmed that Israel does indeed possess nuclear bombs, as well as awesome weapons technology similar to America's."[12]

Although any one of these officially released, authoritative statements from CIA, DOD and the U.S. Air Force alone are sufficient to waive the Defendant's right to claim that the existence of Israel's nuclear weapons program is a classified U.S. secret under Exemption 1, it is also informative to consider the official statement of a former U.S. President and former top classification authority issued in 2008.

> "In a 2008 news conference, former President Jimmy Carter stated that 'The U.S. has more than 12,000 nuclear weapons, the Soviet Union (Russia) has about the same, Great Britain and France have several hundred, and Israel has 150 or more. We have a phalanx of enormous weaponry... not only of enormous weaponry but of rockets to deliver those missiles on a pinpoint accuracy target."[13]

B. Defendants are improperly withholding WNP-136 under Exemption 7(E)

An agency seeking to withhold records under Exemption 7(E) must establish three elements. First, the agency must show that the record was "compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7); see *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989) ("Before it may invoke [Exemption 7], the Government has the burden of proving the existence of such a compilation for such a purpose."); *Pub. Empls.for Envtl. Responsibility v.*

[12] https://www.thenation.com/article/its-official-pentagon-finally-admitted-israel-has-nuclear-weapons-too/
[13] "Israel has at least 150 atomic weapons: Carter" Reuters, May 26, 2008 https://www.reuters.com/article/us-israel-nuclear-carter/israel-has-at-least-150-atomic-weapons-carter-idUSL2673174120080526

U.S. Section, Int'l Boundary and Water Comm'n, 740 F.3d 195, 202-203 (D.C. Cir. 2014). The D.C. Circuit refers to this as "the threshold requirement of Exemption 7." *Tax Analysts v. IRS*, 294 F.3d 71, 77 (D.C. Cir. 2002).

Defendant DOE used 7(E) to redact most WNP-136 contents, yet readily admits that these contents do not directly meet this first criteria. "The information is not directly related to law enforcement investigations or prosecutions, but because it is guidance concerning the treatment of certain information as classified or sensitive, it is a form of preventive law enforcement." [Complaint, ECF 1, Exhibit C] This claim necessitates further examination into whether WNP-136 really does protect secrets from an examination of how it has been used. In practice Defendants used WNP-136 to punish DOE employee James Doyle who did not release any classified information, but rather provided public analysis of information about Israel's nuclear weapons program that has already been authoritatively released.

Second, the agency must satisfy the specific subject-matter test of Exemption 7(E) by showing that disclosure of the record would reveal "techniques and procedures for law enforcement investigations or prosecutions, or guidelines for law enforcement investigations or prosecutions." 5 U.S.C. § 552(b)(7)(E); see PEER, 740 F.3d at 204.

However, DOE has no "techniques and procedures for law enforcement" to protect. It has already revealed the techniques and procedures WNP-136 avails. Home raids, dismissal, threatened prosecutions for the disclosure of non-classified information. WNP-

136 content withheld under 7(E) therefore is not secret, in addition to not being classified, and Defendants admit withheld information is entirely unclassified. "DOE sensitive unclassified information related to guidance on the handling of certain information pertaining to the Israeli government, some of which the [DOS] has determined to be [NSI]." (ECF 14, page 15). This unclassified information withheld by defendants under 7(E), given the U.S. government's acknowledgement that Israel has a nuclear weapons program, is not properly withheld under FOIA exemption 7(E), because there is no sensitive information to protect.

Finally, the agency must show that disclosure "could reasonably be expected to risk circumvention of the law." Id. The Defendant's use of 7(E) is ironic, since it is now abundantly clear that the core purpose of WNP-136 is the opposite of what 7(E) is supposed to achieve, it is in fact used to preempt enforcement of the Symington & Glenn Amendments to the Arms Export Control Act. WNP-136 does so by attempting to limit release of the kind of federal agency information about Israel's nuclear weapons programs that generates public pressure for the enforcement of AECA. That withheld by Defendants in WNP-136 under 7(E) is again likely merely a list of penalties federal agency employees and contractors will suffer if they ever dare mention the non-secret that Israel has a nuclear weapons program. Invocations of 7(E) cannot stand when they attempt to protect the classification of a classification guide protecting a non-secret, solely designed to circumvent the law.

Because the Defendants have not shown that the redacted materials at issue in this case meet any of the three elements of Exemption 7(E), the Court should grant Plaintiff's Motion and order release of the records withheld under 7(E).

C. Defendants may not withhold WNP-136 under Exemption 1 and 7(E) to conceal violations of law, inefficiency, administrative error or to prevent embarrassment.

1. Exec. Order No. 13526, § 1.7 (1)-(2) expressly forbids using secrecy classification to conceal violations of law, inefficiency, administrative error or to prevent embarrassment.

Defendant Department of State has demonstrated in the past that it wishes to avoid intense embarrassment over its longstanding failure to advance American nuclear non-proliferation objectives in all matters related to Israel. By suppressing release of unclassified and non-classifiable official U.S. government information about Israel's nuclear weapons program, DOS hopes to transcend such embarrassment while diverting public attention to other issues. In the past, this included Secretary of State Colin Powell's false assertions that Iraq had WMD programs.[14] At present, it includes Secretary of State Pompeo's insinuations that Iran has an "inevitable nuclear weapons capability,"[15] for which he offers no evidence.

[14] Steven R. Weisman, Powell Calls His U.N. Speech a Lasting Blot on His Record, New York Times, 9/9/2005, https://www.nytimes.com/2005/09/09/politics/powell-calls-his-un-speech-a-lasting-blot-on-his-record.html
[15] https://www.state.gov/secretary/remarks/2018/05/282301.htm

As stated in the complaint, Department of State Spokesperson John Kirby on September 16, 2016 was publicly challenged at an official briefing at the U.S. Department of State by a news reporter asking whether his agency really supported the Treaty on the Non-Proliferation of Nuclear Weapons:

> "QUESTION: Okay. So an email has recently come to light, an exchange between Jeffrey Leeds and former Secretary of State Colin Powell, in which he acknowledges that Israel has, quote – has – he says 200 nuclear weapons. And the Nuclear Nonproliferation Treaty has not been signed by Israel. Under U.S. law, the United States should cut off support to Israel because it's a nuclear power that has not signed the Nuclear Nonproliferation Treaty according to Colin Powell. Correct?"

To avoid embarrassment, Kirby claimed the issue of whether Israel has nuclear weapons was classified U.S. national intelligence.

> "MR KIRBY: I'm certainly not going to discuss matters of intelligence from the podium and I'm not – I have no comment on that."

Defendants do not address this evidence by claiming they could not verify it through the Department of State's web page with the video and transcript of the briefing. (ECF 12, page 8, #38) They are correct. The Department of State deleted the contents of the web page (though not the briefing web page itself).

However, the Internet Archive, a San Francisco-based nonprofit digital library with the stated mission of "universal access to all knowledge" crawled the official Department of State web page several times before the Department of State deleted the video and transcript. A true and correct copy of the deleted video and transcript from the official briefing session is still available at the Internet Archive.[16]

Plaintiff believes the Department of State's selective deletion of the official record of this exchange between a member of the news media and its official spokesperson is further evidence that DOS wishes to improperly invoke classification to avoid embarrassment over the agency's failure to uphold the Treaty on the Non-Proliferation of Nuclear Weapons, by claiming Israel's nuclear weapons program is NSI. This is simply not permitted by E.O. 13526.

Another example is the long-term visa the Department of State granted Israeli moviemaker Arnon Milchan, who is known by DHS and the FBI for his role in illegally smuggling nuclear weapons making technologies from the United States to Israel, as a sef-confessed long-time agent of the Israeli clandestine services.[17]

According to numerous press accounts, Israeli Prime Minister Benjamin Netanyahu intervened three times to "arrange for a long-term visa" for Milchan in the year 2014 after concerns about Milchan's self-admitted role as an Israel spy meant he became ineligible to

[16] https://web.archive.org/web/20170103170019/https://www.state.gov/r/pa/prs/dpb/2016/09/262000.htm
[17] FBI Treasury Customs investigation of MILCO - Heli nuclear trigger smuggling to Israeli Ministry of Defense, http://www.israellobby.org/krytons/

apply for the 10-year visas as he had obtained up to that year.[18] According to NPR, "Milchan claimed he was recruited in the 1960s by Shimon Peres, the late Israeli leader, who was a defense official at the time, and worked to procure technology for Israel's nuclear program. He reportedly smuggled 800 nuclear triggers from California to Israel from 1979 to 1983 without a proper license. Milchan did not immediately answer a request for comment."[19]

DHS and FBI files reveal that Israeli Prime Minister Benjamin Netanyahu also worked at an Israeli node of the Milchan front-company smuggling network (Heli Trading), meeting often with the U.S. front companies to facilitate the smuggling of export-prohibited items.[20] *MDR/Heli Trading LTD Arms Smuggling 1985*, Federal Bureau of Investigation FOIA release 1175900-000

Defendant Department of State has refused all inquiries about why it ultimately granted a self-confessed Israeli spy and known nuclear weapons technology smuggler a long-term visa to reside in the United States. DOS presumably does not wish to face the demands by an informed public for additional accountability over such matters. Generally avoiding such embarrassment is why DOS helped promulgate and enforce WNP-136 in the first

[18] Toi Staff, 'Netanyahu asked Kerry 3 times to help his benefactor Arnon Milchan with US visa' Times of Israel, January 7, 2017. https://www.timesofisrael.com/netanyahu-asked-kerry-3-times-to-help-his-benefactor-arnon-milchan-with-us-visa/

[19] Daniel Estrin, Netanyahu Lobbied The U.S. For 'Fight Club' Producer Milchan But Denies Bribes, February 15, 2018.. https://www.npr.org/sections/parallels/2018/02/15/585585693/netanyahu-lobbied-the-u-s-for-fight-club-producer-milchan-but-denies-bribes

[2020] MDR/Heli Trading LTD Arms Smuggling 1985, Federal Bureau of Investigation FOIA release 1175900-000, http://www.israellobby.org/krytons/06272012_milco_mdr.pdf

place. DOS calculates if it refuses to acknowledge the existence of Israel's nuclear weapons program, it can stonewall public demands for information and thus accountability over all related matters.

Another scandal reveals why DOE wishes to avoid embarrassment and thwart law enforcement by treating the existence of Israel's nuclear weapons program as a secret.

On June 21, 1978 at 2:15 PM Department of Energy investigators Bill Knauf and Jim Anderson visited former Atomic Energy Commissioner Glenn T. Seaborg. According to Seaborg's official office journal, "They said that some enriched Uranium-235 which can be identified as coming from the Portsmouth, Ohio plant has been picked up in Israel which, of course, has excited some members of Congress."[21] Office Journal, June 21, 1978, Glenn T. Seaborg Papers, Library of Congress, Manuscripts Division. To this day, the Department of Energy does not wish to suffer the embarrassment of acknowledging that Israel stole enough DOE-owned weapons grade nuclear material from one of its U.S. contractors to build several atomic bombs. To ever do so would require taking action to rectify the situation, including addressing the dire health concerns of a large population poisoned by the smuggling front, and helping to assess the proper parties for the costs of an ongoing $500 million cleanup[22] of the site of the ramshackle facility,[23] which the Department of Energy

[21] http://israellobby.org/numec/6211978seaborg.pdf
[2222] http://www.post-gazette.com/local/region/2014/03/14/Federal-report-finds-nuclear-waste-underestimated-at-Armstrong-County-site/stories/201403140175
[23] https://triblive.com/opinion/editorials/13363046-74/trib-editorial-lessons-to-learn-from-nuclear-fuels-plant-lawsuit

has fought for decades, for purely political, but not national security reasons. CIA Tel Aviv Station Chief John Hadden publicly characterized DOE contractor NUMEC as "An Israeli operation from the beginning."[24]

DOE has been forced via persistent FOIA requests to publicly acknowledge more weapons-grade material was lost from NUMEC than any other U.S. plant. *Highly Enriched Uranium: Striking A Balance*, U.S. Department of Energy, National Nuclear Security Administration, Office of the Deputy Administrator for Defense Programs, January 2001.[25] But DOE's attempt through WNP-136 to avoid the embarrassment of acknowledging the material went into Israel's nuclear weapons program (and much other U.S. proprietary technology and know-how) by gagging employees and contractors of its own agency as well as others, in collusion with the U.S. Department of State by improperly blocking release of information, is not permitted under FOIA.

III. Defendant's motion should be denied.

Defendants have not met their burden of proving they have complied with their obligations under FOIA. A district court reviewing a motion for summary judgment in a FOIA case "conducts a de novo review of the record, and the responding federal agency bears the burden of proving that it has complied with its obligations under the FOIA." Neuman v. United States, 70 F. Supp. 3d 416, 421 (D.D.C. 2014); CREW, 746 F.3d at 1088;

[24] Andrew and Leslie Cockburn, Dangerous Liaison: The Inside Story of the U.S.-Israeli Covert Relationship, June 1, 1992

[25] https://fas.org/sgp/othergov/doe/heu/striking.pdf

see also 5 U.S.C. § 552(a)(4)(B). In addition to misapplying FOIA exemptions, Defendants have not met the required standards for obtaining summary judgement because they did not properly process Plaintiff's FOIA request under mandatory referral guidelines.

A. Defendants did not follow proper procedure to notify Plaintiff of DOS FOIA equity during the administrative phase.

Defendants call for dismissal and summary judgement over the issue of Plaintiff's alleged failure to file a FOIA with the Department of State over its equities within WNP-136. (ECF 14, pp 8-9) In doing so, they affirm the fundamental weakness of their case against *in camera* review and release. This allegation is also entirely moot, due to Defendants' joint failure to follow appropriate procedure during the administrative phase, and the fact that the Plaintiff did file a FOIA with DOS upon finally receiving the DOS FOIA case number required to effectively file a separate FOIA with an agency known for its non-compliance with proper procedure.

B. Upon receipt of required DOS FOIA case number, Plaintiff Filed a FOIA with DOS.

Department of Justice administrative procedure is clear about the duties and obligations of agencies processing FOIA requests where equity from other agencies is involved. "While referrals and consultations are widely utilized and accepted, see, e.g., Sussman v. U.S. Marshals Service, 494 F.3d 1106, 1118 (D.C. Cir. 2007), it is important that agencies remain cognizant of the importance of keeping requesters informed so that they

understand what has happened to the documents that are responsive to their requests, that they are not disadvantaged by the referral and consultation process, and that they have a point of contact at the relevant agency where they can make inquiries about the status of their requests, including the status of any records that have been referred." DOJ, Office of Information Policy, *OIP Guidance, Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest In Them*. (August 2014)[26] [hereinafter *DOJ FOIA Referral Guidance*].

Defendant DOE provided no DOS point of contact to Plaintiff in its initial administrative response to the FOIA (Complaint, ECF 1, Exhibit A), or notification that there were DOS equities in the release letter (Complaint, ECF 1, Exhibit B) or its denial of the administrative appeal. (Complaint, ECF 1, Exhibit C)

Under proper *DOJ FOIA Referral Guidance* administrative procedure, DOE was obligated to:

> "1. Identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
>
> 2. Prior to making the referral, review the records for any equity your agency may have and include your agency's disclosure recommendations in the referral

[26] https://www.justice.gov/oip/blog/foia-guidance-13

memorandum. That will facilitate the processing of the referral by the receiving agency.

3. Send the documents, with the accompanying memorandum containing your agency's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of your processing.

4. Include in the referral package the FOIA request number assigned by your agency. That original FOIA request number should always accompany any communication concerning the referred documents. Also include a copy of the FOIA request.

5. Provide the date the request giving rise to the referral was received by your agency. That will allow the agency receiving the referral to place the records in any queue according to that request receipt date.

6. Advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.

7. Maintain a copy of the records being referred and the cover memorandum accompanying the referral."

In addition to DOE failing to provide a FOIA contact for the referral to Plaintiff, DOS did not comply with *DOJ FOIA Referral Guidance* by issuing its own FOIA tracking

number to the Plaintiff. upon receipt of the DOE FOIA referral, as DOS was obligated to do under *DOJ FOIA Referral Guidance*:

> "1. Assign your own agency's tracking number to the referral so that you can readily track it.
>
> 2. Send the FOIA requester an acknowledgment of receipt of the referral and identify the agency that made the referral, subject to the exceptions described below for coordinating a response.
>
> 3. Include in the acknowledgement both your agency's tracking number and the original FOIA request tracking number assigned by the agency making the referral so that the requester can readily link the referred records to his or her original request.
>
> 4. Provide the FOIA requester with a telephone line or internet service that can be used to obtain information about the status of the referred records.
>
> 5.Track the referral just as you would an incoming request and include it in your Annual FOIA Report.
>
> 5. Place the documents that make up the referral in the appropriate processing track at your agency according to the date the FOIA request was first received by the agency making the referral, and not according to the date the referral was received by your agency. In that way, the FOIA requester does not incur any timing disadvantage by virtue of the fact that a referral was made."

6. Always include the original request number from the referring agency as well as your own referral number in any correspondence with the requester regarding the referred documents."

Plaintiff was severely disadvantaged by Defendants' failure to adhere to proper *DOJ FOIA Referral Guidance* on DOS agency equity during the administrative process. DOS is a difficult agency to FOIA even with proper contacts and tracking numbers. DOS was among eight federal agencies found to have unprocessed FOIA requests more than a decade old, according to a 2011 survey by the National Security Archive at George Washington University.[27]

Failure to adhere to FOIA procedure is rampant at DOS, even in areas that are the object of frequent requests, such as the Office of Secretary. According to a report by Department of State Inspector General Steve Linick "there are a series of failures in the procedures the office of the secretary used to respond to public records requests, including a lack of written policies and training, as well as inconsistent oversight by senior personnel." *Evaluation of the Department of State's FOIA Processes for Requests Involving the Office of the Secretary* Office of the Inspector General, U.S. Department of State, January 2016.[28]

Now, Defendants wish to parlay their own failure to properly adhere to *DOJ FOIA Referral Guidance* equity referral procedure in the administrative phase into dismissal and

[27] https://nsarchive2.gwu.edu/NSAEBB/NSAEBB349/index.htm
[28] https://www.politico.com/f/?id=00000152-1c41-d25f-a95b-9dcf45950001

summary judgement. However, their attempt fails, because unlike Defendants, Plaintiff follows proper procedure.

C. Defendant arguments about Plaintiff failure to submit a FOIA to DOS are moot, because Plaintiff filed a DOS FOIA.

On 7/26/2018 Plaintiff finally received proper notification from the Department of State in its Declaration of Eric F. Stein (ECF 14-3, page 3) that the Department of State internal Case Control Number for Plaintiff's original year 2015 FOIA was P-2015-07312. This was the first time the DOS FOIA tracking number was properly released to Plaintiff, as required by *DOJ FOIA Referral Guidance*.)

Subsequently, on August 2, 2018, Plaintiff did file a FOIA with the U.S. Department of State seeking release of its equity in WNP-136, referencing Case Control Number P-2015-07312. The FOIA was delivered to the Department of State on August 2 according to USPS tracking number 9405511899560104088959.[29]

D. Defendants have provided no evidence that WNP-136's core purpose is not to violate AECA.

Defendants offer a string of speculative and conclusory justifications in agency affidavits seeking summary judgement, while the specific, key points made in the Plaintiff's

[29] https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&tLabels=9405511899560104088959%2C

complaint have gone entirely unaddressed in agency affidavits. To reiterate, Plaintiff has asserted and provided evidence that:

1. WNP-136's overarching purpose is to undermine enforcement of AECA so that the lion's share of U.S. foreign aid may be smoothly delivered to Israel without application of 22 USC §2799aa-1: Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations. Defendant DOS has only responded with generalities and assertions that "withheld sentence contains information relating to the potential for an Israeli nuclear capability. Release of this information reasonably could be expected to cause serious damage to the national security of the United States, both by harming diplomatic relations with the United States and Israel through the release of information that has substantial implications for Israel's security, and by upsetting the geopolitical security situation in the Middle East region, which represents a longstanding security interest of the United States." (ECF 14-3) DOS provides no specific answer addressing the far less ambiguous, probable and compelling argument that WNP-136 is specifically designed to violate AECA, which is not a purpose that can underly withholding information under FOIA exemptions.

Similarly, DOE's affidavit (ECF 14-2) only in the very types of boilerplate generalities that are expressly impermissible in such proceedings because they are not tailored to the particular information being withheld, that "Executive order to be kept secret in the interest of national defense or foreign policy." DOE's Edith Chalk cited Executive Order 13526

which provides the basis for classification and declassification to safeguard national security information, without addressing or balancing prohibitions on classification for violation the law and preventing embarrassment. Chalk also simply restated Exemption 7(E) as permitting retention of records "compiled for law enforcement purposes…if such disclosure could reasonably be expected to risk circumvention of the law" without addressing the substance of Plaintiff's argument.

Again, defendants appear to readily concede there is no actual secrecy claim under 7(E) for "law enforcement purposes" as commonly understood, because the U.S. has never once criminally prosecuted the main actors in the specific violations cited in the Plaintiff's complaint, such as "diversions of materials and technologies to Israel, as it did in the past over nuclear triggers (The Milchan-Netanyahu krytron smuggling ring), weapons grade uranium (NUMEC), oscilloscopes and other weapons development technology diversions (Telogy LLC)." (Complaint, ECF 1, page 12)

Courts have repeatedly rejected the kinds of non-responsive, glib and circuitous affidavits as provided by the Defendants. See *Halpern v. FBI*, 181 F.3d 279, 293 (2d Cir. 1999) (declaring that agency's "explanations read more like a policy justification" for Executive Order 12356, that the "affidavit gives no contextual description," and that it fails to "fulfill the functional purposes addressed in Vaughn"); *Campbell v. DOJ*, 164 F.3d 20, 31, 37 (D.C. Cir. 1998) (remanding to district court to allow the FBI to "further justify" its Exemption 1 claim because its declaration failed to "draw any connection between the

documents at issue and the general standards that govern the national security exemption"), on remand, 193 F. Supp. 2d 29, 37 (D.D.C. 2001) (finding declaration insufficient where it merely concluded, without further elaboration, that "disclosure of [intelligence information] . . . could reasonably be expected to cause serious damage to the national security"); *Oglesby v. U.S. Dep't of the Army*, 79 F.3d 1172, 1180-1181 (D.C. Cir. 1996) (rejecting as insufficient certain Vaughn Indexes because agencies must itemize each document and adequately explain reasons for nondisclosure*); Rosenfeld v. DOJ*, 57 F.3d 803, 807 (9th Cir. 1995) (affirming district court disclosure order based upon finding that government failed to show with "any particularity" why classified portions of several documents should be withheld); *Wiener v. FBI*, 943 F.2d 972, 978-79 (9th Cir. 1991) (rejecting as inadequate agency justifications contained in coded Vaughn affidavits, based upon view that they consist of "boilerplate" explanations not "tailored" to particular information being withheld pursuant to Exemption 1); ACLU v. ODNI, No. 10-4419, 2011 WL 5563520, at *5 (S.D.N.Y. Nov. 15, 2011) (criticizing agency declaration that lacked contextual description of records and failed to identify the applicable provisions of executive order); *ACLU v. DOJ*, 2011 WL 887731, at *3 (rejecting agency affidavits where the agency "has, in effect, parroted the language of the Executive Order (in the disjunctive)"); *Pipko v. CIA*, 312 F. Supp. 2d 669, 674 (D.N.J. 2004) (commenting that agency affidavits must provide more than "merely glib assertions" to support summary judgment); Coldiron, 310 F. Supp. 2d at 52 (observing that courts do not expect "anything resembling poetry," but nonetheless expressing dissatisfaction with agency's "cut and paste" affidavits).

Until the Defendants provide specific, detailed evidence for how WNP-136 could be interpreted as anything but a means for facilitating violations of the AECA, this point must be considered to be conceded by Defendants. This is not allowed under Exec. Order No. 13526, § 1.7(1)-(2)) Defendants have not met their required burden as demanded in a *de novo* FOIA review.

E. Defendants have provided no evidence that WNP-136 is authorized to reclassify information already properly released to the public.

The classification of WNP-136 not only contradicts the source from which it derives, it attempts to classify its own contents and reclassify already released authoritative information about Israel's nuclear weapons program. This is not permitted by Exec. Order No. 13526, § 1.7(c) or even the classification guide from which WNP-136 is derived.

Defendants have so far provided no response to Plaintiff's assertion in the complaint. that WNP is not properly derived from *Department of State Classification Guide(DSCG 05-01)*January 2005, Edition 1[30] which counsels that, "Reporting on and analysis of the internal affairs or foreign relations of a country is a central function of U.S. foreign service posts and is vital to the formulation and execution of U.S. foreign policy. This reporting should be unclassified when the subject matter is routine, already in the public domain, or otherwise not sensitive." (Complaint, ECF 1, p 1).

[30] https://fas.org/sgp/othergov/dos-class.pdf

More gravely, Defendants have not demonstrated how WNP-136 meets classification guidelines for reclassifying information already in the public domain and treating such information as secret, which is precisely means by which WNP-136 subverts the Arms Export Control Act. Exec. Order No. 13526, § 1.7(c) states **"**information may not be reclassified after declassification and release to the public under proper authority unless: (1) the reclassification is personally approved in writing by the agency head based on a document-by-document determination by the agency that reclassification is required to prevent significant and demonstrable damage to the national security; (2) the information may be reasonably recovered without bringing undue attention to the information."

Defendants have not provided any of the necessary evidence that the authoritative reports confirming Israel's status as a nuclear weapons state were ever reclassified after their declassification and/or release to the public. Any assertion that WNP-136 information pertaining to a blanket classification that Israel's nuclear weapons program is national security information which is properly classified fails yet again.

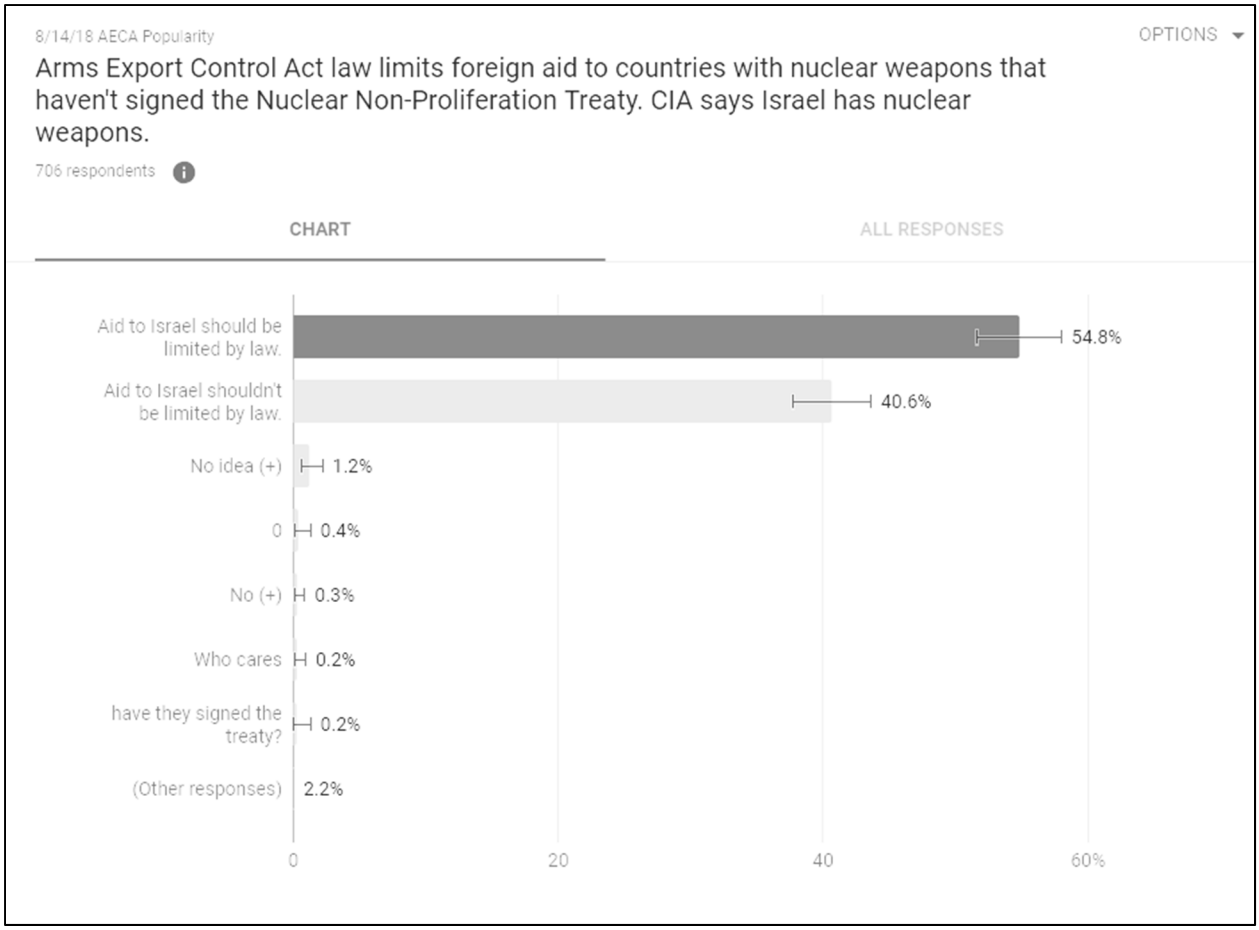
E. The Court should exercise its discretion to review WNP-136 *in camera* for release

Defendants incorrectly claim "Unfortunately for Plaintiff, the numerous sources he cites support only the proposition that there may be some public interest in Israel's potential nuclear weapons capability and potentially the release of related information, not any particular interest in whether this Court conducts an in-camera review of national security

information or sensitive unclassified information contained in DOE's classification guide, WNP136. By definition, in camera review is conducted in the privacy of judicial chambers, and the public will be excluded. While Plaintiff may have an interest in the Court's in camera review, it is unlikely that the public does." (ECF 14, page 17)

Americans are interested in the outcome of *in camera* review in the broadest sense, because they are highly interested in rule of law and government transparency. The central question posed in Plaintiff's complaint about WNP-136 secrecy is whether the enforcement section of the AECA is being unlawfully undermined to deliver foreign aid under another AECA section on foreign assistance. (Complaint, ECF 1, page 18). This is demonstrably of vital public concern.

The following poll was fielded through Google Consumer Surveys to a representative sample of American adults between August 14-16.



The poll reveals a solid majority of Americans (54.8%) would like authoritative findings about Israel's nuclear weapons status to generate proper enforcement of the AECA. The poll's root mean square score of 5.0 indicates the result is statistically significant.[31]

Defendants attempt to muddy the waters, claiming "The proper classification of executive agency information related to this topic does not depend on an isolated response to the binary question of whether such a weapons program does or does not exist; rather, it

[31] Google Consumer Surveys, "Should the U.S. enforce the AECA?" https://surveys.google.com/reporting/survey?survey=2zecm5octmoopim6xvslvqtjpy

involves evaluation of a wide range of information and consideration of multiple factors affecting whether disclosure of the information could be expected to harm the national security." (ECF 14, p 18) Actually, the question as to whether Israel's has a nuclear weapons program or not is a binary question, and proper classification and FOIA exemption does depend on a simple "yes" or "no" answer.

If, as Plaintiff has proven with ample evidence, the withheld content in WNP-136 is that the existence of Israel's nuclear program is classified U.S. national security information, it simply does not stand. If WNP-136 content withheld under 7(E) are guidelines for promulgating restrictions on release of that non-secret, the 7(E) claims do not stand either.

Plaintiff, in his work as a researcher, frequently interacts with FOIA officials in multiple U.S. government agencies impacted by WNP-136 and other such classification guidelines. FOIA officials are now preemptively withholding any and all references to Israel's nuclear weapons program in files both new and old, classified and unclassified. This Court, and the D.C. Court of Appeals, have already authoritatively ruled on a case filed by Plaintiff in 2016 that the only means to resolve questions about widespread adherence to mis-classification guides such as WNP-136 is as a FOIA, and not APA, matter. *Smith v USA, et al*, United States Court of Appeals, District of Columbia Circuit, No. 17-5091, On Appeal from the US District Court for Columbia 1:16-cv-01610-TSC.

Years later, the true nature of WNP-136, which has a continuing wide-ranging harmful effect on government transparency, continues to impact the work of researchers like

the Plaintiff employing FOIA as the only means to better understand the function of government. WNP-136 should at long last be examined for release via *in camera* review. Such a review easily meets the normal preconditions cited in the complaint (ECF 1, pp 16-18). *In camera* review will reveal the true nature of WNP-136 so it may be confidently released to the Plaintiff and public.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant's Motion for Summary Judgement and grant Plaintiff's Motion for Summary Judgement.