

September 2, 2026

BY ECF

Hon. Paul A. Engelmayer, United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *ACLU, et al. v. DOJ, et al.*, 25 Civ. 10189 (PAE)

Dear Judge Engelmayer:

Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (together, “ACLU”), and the Center for Constitutional Rights (“CCR”) write respectfully to alert the Court to new evidence confirming that the Department of Defense (“DOD”) has expressly adopted the Office of Legal Counsel memorandum (“OLC Memo”) at issue in this lawsuit as the working law of its ongoing boat strikes campaign.

This morning, on the one-year anniversary of the first Trump administration boat strike, *The Intercept* published an on-the-record statement from U.S. Southern Command spokesperson Steven McCloud, confirming that the OLC Memo provides the “legal framework” for the campaign. See Nick Turse, *The U.S. Has Killed 227 Civilians in Boat Strikes During “A Year of Murders,”* *The Intercept* (Sept. 2, 2026), <https://theintercept.com/2026/09/02/military-boat-strikes-killings-year>.

Mr. McCloud’s comments were made in response to statements by two anonymous officials. The first anonymous official, whom *The Intercept* identified as being in DOD, said that the year-long boat strikes campaign was “absolutely criminal” and that the “Trump administration has normalized murder.” *Id.* The second anonymous official, whom *The Intercept* identified as having “reviewed the OLC opinion,”¹ stated that the opinion was “flimsy yet expansive” but that the administration “had ‘nonetheless managed to overstep’ its bounds.” *Id.* The second official added that the boat strikes have “killed people beyond those the OLC opinion claimed were legal targets.” *Id.*

On behalf of DOD’s U.S. Southern Command, Mr. McCloud responded as follows:

“Each operation is planned and executed within the full bounds of our legal framework,” said spokesperson Steven McCloud, “ensuring that every target meets the legal criteria established by our Office of Legal Counsel.”

Id.

¹ Cf. ECF No. 63, ¶¶ 5–7 (declaration of DOD General Counsel Matthews) (attesting that “only four physical copies [of the OLC Memo] are maintained across the entire Executive Branch,” that DOD’s “sole copy has been held in a secure safe in the Office of the General Counsel,” and that “[o]nly limited senior Department and military leadership officials, or their legal counsel, have reviewed the Memorandum.”).



Mr. McLoud's official statement confirms, once again, that DOD treats the OLC Memo as "establishing" the "legal criteria" that govern its boat strikes campaign. It thus corroborates statements made by other DOD officials and members of Congress demonstrating that the OLC Memo constitutes the working law of the boat strikes campaign. *See, e.g.*, ECF No. 58-1 (testimony of Chairman of the Joint Chiefs of Staff General Caine); ECF No. 50-1 (testimony of former Department of Defense Principal Deputy General Counsel Young); ECF No. 50-5 at S7945 (statement of Senator Kaine) (describing the OLC Memo as being "presented" to the Senate as "the legal authorization document" for the boat strikes campaign).

We thank the Court for its consideration of this letter.

Respectfully submitted,

/s/ Jeffrey Stein

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