

PUBLIC UNCLASSIFIED EXCERPTS OF RECORD

**No. 06-36083
(Consolidated with Nos. 06-17132, 06-17137)**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**AL-HARAMAIN ISLAMIC FOUNDATION, INC., et al.,
Plaintiffs - Appellees,**

v.

**GEORGE W. BUSH, et al.,
Defendants - Appellants.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

EXCERPTS OF RECORD

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INTENTIONALLY OMITTED

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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AL-HARAMAIN ISLAMIC FOUNDATION,
INC., an Oregon Nonprofit Corporation,
WENDELL BELEW, a U.S. Citizen and
Attorney at Law, and ASIM GHAFOR, a
U.S. Citizen and Attorney at Law,

Plaintiffs,

vs.

GEORGE W. BUSH, President of the United
States; NATIONAL SECURITY AGENCY
and KEITH B. ALEXANDER, its Director;
OFFICE OF FOREIGN ASSETS
CONTROL, an office of the United States
Treasury and ROBERT W. WERNER, its
Director; FEDERAL BUREAU OF
INVESTIGATION and ROBERT S.
MUELLER III, its Director,

Defendants.

CV '06 274 MO

No. _____

COMPLAINT

(Violations of Foreign Intelligence
Surveillance Act, Separation of Powers, Fourth
Amendment, First Amendment, Sixth
Amendment, and International Covenant on
Civil and Political Rights)

INTRODUCTION

1. This is an action for injunctive relief and for damages seeking an order that would require defendants and their agents to halt an illegal and unconstitutional program of electronic surveillance of United States citizens and entities. This action also seeks to enjoin the use of

evidence obtained through this surveillance in the proceeding in which defendant Office of Foreign Assets Control has designated plaintiff Al-Haramain Islamic Foundation, Inc. (“Al-Haramain Oregon”), as a terrorist organization.

2. Defendants have engaged in electronic surveillance of plaintiffs without court orders, which surveillance is contrary to clear statutory mandates provided in the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801-62 (“FISA”), and to provisions of the United States Constitution as well as a treaty entered into thereunder.

3. Defendants have used illegal surveillance to harm plaintiffs in manners set forth more specifically in the body of this Complaint.

PARTIES

4. Plaintiff Al-Haramain Oregon is an Oregon nonprofit corporation whose headquarters were established in Ashland, Oregon. Plaintiff currently owns real property in Ashland, Oregon, and in Springfield, Missouri.

5. Plaintiff Wendell Belew is a citizen of the United States and an attorney at law who has had business and other relationships with plaintiff Al-Haramain Oregon.

6. Plaintiff Asim Ghafoor is a citizen of the United States and an attorney at law who has had business and other relationships with plaintiff Al-Haramain Oregon.

7. Defendant George W. Bush is President of the United States.

8. Defendant National Security Agency is an agency of the United States.

9. Defendant Keith B. Alexander is Director of defendant National Security Agency.

10. Defendant Office of Foreign Assets Control is an office of the Department of the Treasury of the United States.

11. Defendant Robert W. Werner is Director of the Office of Foreign Assts Control.

12. Defendant Federal Bureau of Investigation is a federal police and intelligence agency.

13. Defendant Robert S. Mueller III is Director of the Federal Bureau of Investigation.

JURISDICTION AND VENUE

14. This court has jurisdiction under 28 U.S.C. § 1331.

15. The United States District Court for the District of Oregon is a proper venue of this action insofar as one of the plaintiffs is an Oregon corporation that owns real property in this jurisdiction. In addition, defendants' actions caused harm in this District.

STATEMENT OF FACTS

16. In February 2004, defendant Office of Foreign Assets Control froze the assets of plaintiff Al-Haramain Oregon pending an investigation into whether that plaintiff was engaged in activities related to terrorism.

17. At the time of the freezing of the assets, plaintiff Al-Haramain Oregon was affiliated with and supported by Al-Haramain Islamic Foundation (hereafter "Al-Haramain Saudi Arabia"), a charity located in, and controlled by individuals residing in, Saudi Arabia.

18. On information and belief, the decision to freeze plaintiff Al-Haramain Oregon's assets was based upon warrantless electronic surveillance of communications between a director or directors of Al-Haramain Oregon and plaintiffs Belew and Ghafoor.

19. In March and April, 2004, defendant National Security Agency targeted, and engaged in electronic surveillance of communications between, a director or directors of plaintiff Al-Haramain Oregon and plaintiffs Belew and Ghafoor. Defendant National Security Agency did not obtain a court order authorizing such electronic surveillance nor did it otherwise follow the procedures mandated by FISA.

20. In May 2004, defendant National Security Agency turned over to defendant United States Treasury Office of Foreign Assets Control logs of the conversations specified in the preceding paragraph.

21. Defendant Office of Foreign Assets Control relied upon the logs obtained without a warrant in designating plaintiff Al-Haramain Oregon as a “specially designated global terrorist” in September 2004. Al-Haramain Saudi Arabia was not and has never been designated as a terrorist organization.

22. Designation of plaintiff Al-Haramain Oregon as a “specially designated global terrorist” has resulted in severe financial hardship and other harms being visited upon plaintiff.

23. Al-Haramain Saudi Arabia was dissolved by order of the Kingdom of Saudi Arabia in the winter or spring of 2004 and has not carried out activities since that date.

24. As a result of defendants’ actions, plaintiff Al-Haramain Oregon has been irreparably damaged insofar as its assets have been frozen, preventing it from engaging in the charitable and humanitarian efforts for which it was organized.

25. As a result of defendants’ actions, plaintiffs Belew and Ghafoor have been irreparably damaged insofar as their abilities to represent their clients have been hindered and interfered with, and have been chilled, by defendants’ illegal and unconstitutional actions.

FIRST CLAIM FOR RELIEF

(Foreign Intelligence Surveillance Act)

26. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

27. Defendants’ engagement in electronic surveillance to monitor conversations between and among plaintiffs as targeted persons without obtaining prior court authorization, and defendants’ subsequent use of the information obtained against plaintiffs, is in violation of

the civil and criminal provisions of FISA. As a result, all evidence obtained by this illegal surveillance must be suppressed pursuant to 50 USC § 1806(g). Further, plaintiffs are entitled to liquidated and punitive damages pursuant to 50 USC § 1810.

SECOND CLAIM FOR RELIEF

(Separation of Powers)

28. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

29. By carrying out their program of unlawful warrantless surveillance, defendants have acted in excess of the President's Article II authority (i) by failing to take care to execute the laws, and instead have violated those laws, (ii) by acting in contravention of clear statutory dictates in an area in which Congress has Article I authority to regulate, and (iii) by engaging in the conduct described above where Congress has specifically prohibited the President and other defendants from engaging in such conduct.

THIRD CLAIM FOR RELIEF

(Fourth Amendment Violations)

30. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

31. Defendants have carried out unreasonable surveillance of plaintiffs' private telephone, email, and other electronic communications without probable cause or warrants in violation of the Fourth Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF

(First Amendment Violations)

32. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

33. Defendants, by carrying out and/or asserting the right to carry out their program of unlawful warrantless surveillance, have impaired plaintiff Al-Haramain Oregon's ability to obtain legal advice, to join together for the purpose of legal and religious activity, to freely form attorney-client relationships, and to petition the government of the United States for redress of grievances, all of which are modes of expression and association protected under the First Amendment of the United States Constitution.

FIFTH CLAIM FOR RELIEF

(Sixth Amendment Violations)

34. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

35. Defendants have impaired plaintiffs' ability to obtain and provide legal advice by carrying out unreasonable surveillance of plaintiffs' private telephone, email, and other electronic communications without probable cause or warrants in violation of the Sixth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF

(Violation of International Covenant on Civil and Political Rights)

36. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

37. On June 25, 2002, the United States Congress ratified the International Convention for the Suppression of the Financing of Terrorism ("Convention"). Article 17 of the

Convention requires the United States to comply with international human rights law in “any measures” taken pursuant to the Convention. One of the measures pursuant to the Convention is the International Covenant on Civil and Political Rights (“International Covenant”) which guarantees the right to privacy. Article 17 of the International Covenant provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

1. Declare that defendants’ warrantless surveillance of plaintiffs is unlawful and unconstitutional, and enjoin any such warrantless surveillance;
2. Order defendants to disclose to plaintiffs all unlawful surveillance of plaintiffs’ communications carried out pursuant to the illegal program;
3. Order defendants to turn over to plaintiffs all information and records in their possession relating to plaintiffs that were acquired through the warrantless surveillance program or were the fruit of surveillance under the program, and subsequently destroy and make no further use of any such information and records in defendants’ possession;
4. Order defendant Office of Foreign Assets Control to purge all information acquired from such program from its files, as well as all fruits of such information and make no further use of any such information;
5. Award plaintiffs individually liquidated damages of \$1,000 or \$100 per day for each violation as specified in the Foreign Intelligence Surveillance Act;
6. Award plaintiffs individually punitive damages of \$1,000,000;

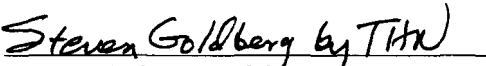
7. Award costs, including an award of attorneys' fees under the Foreign Intelligence Surveillance Act;

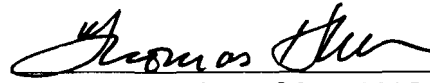
8. Award costs, including an award of attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A);

9. Award such other relief as the Court may deem just and proper.

DATED: February 28, 2006

Respectfully submitted,


Steven Goldberg, OSB 75134


Thomas H. Nelson, OSB 78315
Zaha S. Hassan, OSB 97032

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

AL-HARAMAIN)	
ISLAMIC FOUNDATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	
)	CV. 06-274- KI
GEORGE W. BUSH, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF BARBARA C. HAMMERLE

I, Barbara C. Hammerle, pursuant to 28 U.S.C. § 1746, declare the following under penalty of perjury:

1. I am currently serving as the Acting Director of the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and as OFAC's Deputy Director. I became the Acting Director on March 4, 2006, and have been Deputy Director since January 10, 2005. Prior to becoming the Deputy Director, I was Chief Counsel of the Office of Chief Counsel (Foreign Assets Control), a position I assumed in August, 2001, after serving as the Acting Chief Counsel, and, previously, Deputy Chief Counsel.

Before joining the Office of Chief Counsel in 1990, I was an attorney for several years in the private and public sectors.

2. I am familiar with the mission and operations of OFAC, and make this declaration based upon information within my personal knowledge or provided to me in my official capacity.

3. This declaration is made in connection with Defendants' Response to the Oregonian's Motion to Intervene and to Unseal Records in the above-captioned case.

4. OFAC is the office within the U.S. government principally responsible for the implementation, administration, and enforcement of multiple U.S. economic sanctions programs. OFAC administers sanctions against foreign states and nationals, including terrorism-supporting states, entities and individuals, whose actions threaten U.S. foreign policy and national security. In times of a declared “national emergency,” the International Emergency Economic Powers Act (IEEPA) gives the President the authority, which is delegated to OFAC, to “investigate ... regulate, direct and compel, nullify, void, prevent or prohibit” a wide range of transactions concerning “any property in which any foreign country or a national thereof has any interest.” 50 U.S.C. § 1702. In implementing a sanctions program OFAC, pursuant to delegated authority, typically blocks the property and interests in property of the designated country, group, or individual.

5. After the September 11, 2001 attacks at the New York World Trade Center, in Pennsylvania, and against the Pentagon, President Bush issued Executive Order 13224 of September 24, 2001 (“Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism”), which is to date the most comprehensive Executive order issued to combat international terrorism. With this order, the President declared that the threat of terrorist attacks constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and the President ordered the blocking of all property and interests in property within the United States or in the possession or control of U.S. persons, including foreign branches, in which there is an interest of any person listed in the Annex to the order or subsequently determined to be subject to the order. In Executive Order

13224, the President further delegated to the Secretary of State the power to designate for blocking “foreign persons” who are found “to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.” E.O. 13224 at § 1(b). The President’s specific mandate to the Treasury in the order was to designate those persons, whether foreign persons or U.S. persons, who “are owned or controlled by, or that act for or on behalf of,” designated parties; those who “assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of acts of terrorism for” designated parties; and those who are otherwise “associated with” them. See E.O. 13224 at § 1 (c)-(d). The breadth of the emergency articulated in the Executive order requires Treasury and other government agencies to conduct widespread investigations to make these designations.

6. By memorandum dated February 18, 2004, pursuant to IEEPA, 50 U.S.C. § 1701 *et seq.*, Executive Order 13224, and other authorities, OFAC blocked pending further investigation the property of the United States branch of the Saudi Arabia-based Al-Haramain Islamic Foundation, which is located in Ashland, Oregon (“Al-Haramain”), in order to determine whether it met the criteria for designation under Executive Order 13224. *See* Blocking Memorandum, attached as Exhibit 1.

7. By memoranda dated September 8, 2004, pursuant to IEEPA, Executive Order 13224, and other authorities, Treasury designated Al Haramain, along with one of its directors, Soliman Al-Buthe, as “Specially Designated Global Terrorists” based on a

determination that they met the criteria for designation set forth in Executive Order 13224. *See* Special Designation and Blocking Memoranda, attached as Exhibit 2.

8. It is my understanding that OFAC, in the course of these designation proceedings, provided to the attorneys for Al-Haramain unclassified and non-privileged information supporting the February 18, 2004 blocking action by OFAC in order to give the entity notice of, and an opportunity to respond to, relevant evidence that could be disclosed.

9. I have been informed that a classified document was inadvertently included among the unclassified materials that were sent to the attorneys for Al-Haramain. The disclosure to Al-Haramain of a classified document was not authorized.

10. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 11th, 2006



BARBARA C. HAMMERLE
ACTING DIRECTOR
OFFICE OF FOREIGN ASSETS CONTROL



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

FAC No. SDG - 221885

OFFICE OF FOREIGN ASSETS CONTROL

BLOCKING PENDING INVESTIGATION MEMORANDUM

The Office of Foreign Assets Control, pursuant to Executive Order 13224 ("Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism"), section 203 of the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.), and section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), determines, for the reasons set forth in evidentiary memorandum FAC No. SDG- 221885, that there is reason to believe that on or since the effective date (12:01 a.m. EDT, September 24, 2001) the entity identified below and in evidentiary memorandum FAC No. SDG-221885 is subject to E.O. 13224, and therefore the property described below is blocked pending investigation.

AL-HARAMAIN FOUNDATION (United States)

1257 Siskiyou Boulevard, Ashland, OR 97520, U.S.A.; 3800 Highway 99 S, Ashland, OR 97520-8718, U.S.A.; 2151 E Division Street, Springfield, MO 65803, U.S.A.

Accordingly, except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, all funds and accounts and real property of the entity named above that are or hereafter come within the United States or that are or hereafter come within the possession or control of any U.S. person are blocked pending investigation and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

The President determined in section 10 of Executive Order 13224 (September 23, 2001) that, because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, E.O. 13224 who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Executive Order. Therefore, the President determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In making this determination pursuant to section 1 of the Executive Order, I also find that no prior notice should be afforded the subject of this determination because to do so would give the subject the opportunity to evade the measures described in Executive Order 13224 and, consequently, render those measures ineffectual toward addressing the national emergency declared in that Executive Order.

2/18/04
Date

R. Richard Newcomb

Director
Office of Foreign Assets Control



SEP 8 2004

FAC No. SDG - 232587

OFFICE OF FOREIGN ASSETS CONTROL

SPECIAL DESIGNATION AND BLOCKING MEMORANDUM

The Office of Foreign Assets Control, pursuant to Executive Order 13224 of September 23, 2001, as amended ("Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism"), section 203 of the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 201 of the Global Terrorism Sanctions Regulations (31 C.F.R. 594.201) determines, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, that there is reason to believe that the entities named below and in the attached evidentiary memorandum FAC No. SDG-232587 meet the criteria for designation set forth in section(s) 1(c) and/or (d) of Executive Order 13224 and therefore are designated as persons whose property and interests in property are blocked pursuant to Executive Order 13224, as amended.

AL-HARAMAIN FOUNDATION United States locations:

1257 Siskiyou Boulevard, Ashland, OR 97520, U.S.A.

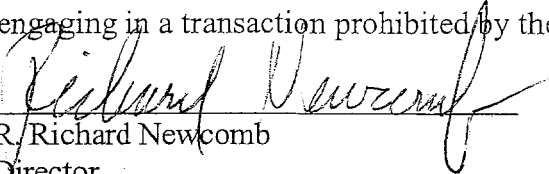
3800 Highway 99 S, Ashland, OR 97520-8718, U.S.A.

2151 E Division Street, Springfield, MO 65803, U.S.A.

Accordingly, except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, (1) all real, personal, and any other property and interests in property of the entity and individual named above, including but not limited to all accounts, that are or hereafter come within the United States, or that are or hereafter come within the possession or control of any U.S. person, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and (2) any transaction or dealing by a U.S. person or within the United States in property or interests in property of the entity and individual named above is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to Executive Order 13224, as amended, or determined to be subject to that order. Except as otherwise authorized, any transaction by a U.S. person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order 13224, as amended, or the regulations, is prohibited, and any

conspiracy formed for the purpose of engaging in a transaction prohibited by the order or the regulations is prohibited.

9/8/04
Date


R. Richard Newcomb
Director

Office of Foreign Assets Control



SEP 8 2004

FAC No. SDG - 232587

OFFICE OF FOREIGN ASSETS CONTROL

SPECIAL DESIGNATION AND BLOCKING MEMORANDUM

The Office of Foreign Assets Control, pursuant to Executive Order 13224 of September 23, 2001, as amended ("Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism"), section 203 of the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 201 of the Global Terrorism Sanctions Regulations (31 C.F.R. 594.201) determines, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, that there is reason to believe that the entity and individual named below and in the attached evidentiary memorandum FAC No. SDG-232587 meet the criteria for designation set forth in section(s) 1(c) and/or (d) of Executive Order 13224 and therefore are designated as persons whose property and interests in property are blocked pursuant to Executive Order 13224, as amended.

AL-HARAMAIN FOUNDATION Comoros Islands location:

B/P: 1652 Moroni, Comoros Islands

Soliman AL-BUTHE a.k.a Soliman Al-Batahai a.k.a. Soliman Al-Bathi

DOB: 12/08/1961

POB: Egypt

Nationality: Saudi Arabia

Saudi Passport #: B049614

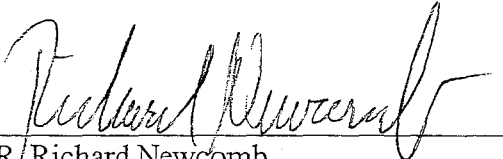
Saudi Passport #: C536660

Accordingly, except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, (1) all real, personal, and any other property and interests in property of the entity and individual named above, including but not limited to all accounts, that are or hereafter come within the United States, or that are or hereafter come within the possession or control of any U.S. person, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and (2) any transaction or dealing by a U.S. person or within the United States in property or interests in property of the entity and individual named above is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to Executive Order 13224, as amended, or determined to be subject to that order. Except as otherwise authorized, any transaction by a U.S. person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order 13224, as amended, or the regulations, is prohibited, and any

conspiracy formed for the purpose of engaging in a transaction prohibited by the order or the regulations is prohibited.

The President determined in section 10 of Executive Order 13224, as amended, that, because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to that order or determined to be subject to that order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the order. Therefore, the President determined that there need be no prior notice of such a listing or determination. In making this determination pursuant to section 1 of Executive Order 13224, as amended, I also find that no prior notice should be afforded to the entity and individual named above because to do so would provide an opportunity to evade the measures authorized in that order and, consequently, would render those measures ineffectual toward addressing the national emergency declared in that order.

9/8/04
Date


R. Richard Newcomb
Director
Office of Foreign Assets Control

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF OREGON

3
4 AL-HARAMAIN ISLAMIC FOUNDATION, INC.,
5 et al.

6 Plaintiffs,

7 v.

8 GEORGE W. BUSH,

et al.

9 Defendants.

Case No:
3:06-cv-00274-KI

10
11 **DECLARATION OF FRANCES R. HOURIHAN**

12 I, Frances R. Hourihan, declare as follows:

13 (1) I am a special agent with the Federal Bureau of Investigation ("FBI") in Washington,
14 D.C. I have been a special agent with the FBI since July 5, 1998.

15 (2) The statements contained in this declaration are based upon my personal knowledge,
16 upon information provided to me in my official capacity, and upon conclusions and
17 determinations reached and made in accordance therewith.

18 (3) In August 2004, the FBI received notification that a government document containing
19 classified information had been disclosed to a private party without authorization.

20 (4) The FBI determined that the disclosure of the classified government document was both
21 unauthorized and inadvertent: an employee of the Office of Foreign Assets Control ("OFAC"), a
22 Department of Treasury component, had inadvertently included the classified government
23 document in a group of unclassified documents that were collected and subsequently produced to
24 private counsel for the Al-Haramain Islamic Foundation's Oregon headquarters ("Al-
25 Haramain"). OFAC provided these documents to Al-Haramain's counsel as part of an
26 investigation that resulted in the designation of Al-Haramain as a "Specially Designated Global
27 Terrorist" pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C.
28 § 1701-1706, and Exec. Order No. 13,224.

(5) As a result of this inadvertent disclosure, several individuals without government security

1 clearances were identified as having received unauthorized access to the classified government
2 document. Several people who were identified as having unauthorized access to the government
3 document were interviewed by the FBI. Each person interviewed was asked to return all copies
4 of the classified document, asked to identify the location of any copies of the document not in
5 their possession, and advised that they should not further review, disclose, discuss, retain and/or
6 disseminate the classified document or the classified information contained in the document.
7 Each person interviewed during the investigation agreed to comply with this request and every
8 person interviewed who acknowledged having a copy of the document returned the document.

9 (6) Attorney Lynne Bernabei, of Bernabei & Katz Law Firm PLLC, who represented Al-
10 Haramain during the civil designation process, confirmed to the FBI that a government document
11 containing classification markings was included with several other documents that were
12 produced by OFAC to attorney Bernabei during the course of OFAC's civil designation process.
13 Upon being advised that the disclosure of the classified government document was not
14 authorized or intended, attorney Bernabei agreed to return all copies of the classified document in
15 her possession to FBI special agents. Additionally, attorney Bernabei identified the other
16 attorneys or persons involved in the litigation with whom she had shared the government
17 document or who may have had access to the government document.

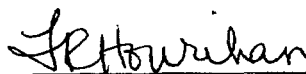
18 (7) The following persons, who are plaintiffs in this action, were among those identified as
19 having possession of or access to the classified government document and were contacted by the
20 FBI: Wendell Belew and Asim Ghafoor. Belew was contacted by the FBI on October 14, 2004,
21 and during an interview provided the FBI with two copies of the classified document. Belew also
22 admitted to the FBI that he provided a copy of the classified document to a reporter, and three
23 copies were subsequently recovered by the FBI through the reporter's attorney. In this instance,
24 the attorney was provided with a letter notifying and warning the attorney and client that they
25 should not further review, disclose, discuss, retain and/or disseminate the classified document or
26 the classified information contained in the document. The attorney advised the FBI that all
27 copies of the document in possession of the client had been returned as requested. Ghafoor was
28 contacted by the FBI on October 13, 2004, and during an interview he advised that he had only

1 one printed copy of the classified document, which copy he then provided to the FBI. Ghafoor
2 also said that he was aware of two electronic copies of the classified document on his home and
3 work computers, and he allowed the FBI to remove those electronic copies from his two
4 computers on November 1, 2004. Belew and Ghafoor both stated that the above-described
5 copies were the only copies of the classified document they had in any format, and they were
6 given a letter advising that they should not further review, disclose, discuss, retain and/or
7 disseminate the classified document or the classified information contained in the document.
8 Copies of those letters are attached as Exhibits 1 and 2 to this declaration.

9 (8) Among the other individuals believed to have obtained a copy or copies of the classified
10 document as a result of the inadvertent disclosure were Soliman Al'Buthe and Pirouz Sedaghaty
11 aka Pete Seda, two officers of Al-Haramain. Al'Buthe, a citizen of Saudi Arabia, was indicted
12 by a federal grand jury for violating criminal statutes governing financial transactions, and he
13 was also designated by OFAC as a "Specially Designated Global Terrorist" pursuant to IEEPA
14 and Exec. Order No. 13,224. Seda was also indicted on related charges. Al'Buthe and Seda are
15 both believed to be living overseas and neither was interviewed by the FBI.

16 (9) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
17 true and correct to the best of my knowledge and belief.

18 Executed this 11th day of April, 2006.

19
20
21 
22 Frances R. Hourihan
23 Special Agent
24 Federal Bureau of Investigation
25 Washington, D.C.
26
27
28



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

October 14, 2004

Mr. Wendell Belew
1150 Connecticut Avenue, NW
Washington, D.C.

From: Beverly Fetty
Supervisory Special Agent
Washington Field Office

Subject: Inadvertent Production of a Privileged United States Government Document

It was reported to this office that a classified and privileged U.S. government document was inadvertently included among documents provided to the office of Bernabei & Katz, LLC on August 20, 2004, by a government agency. Lynne Bernabei has informed this office that a copy of this document was subsequently provided to you. This document was not intended to be disclosed and the government employee who provided the document had no authorization to make this disclosure. The inadvertently disclosed document remains the property of the U.S. government.

This document was marked with classification markings at the top of bottom of each page. We have determined that the document was inadvertently included in a package of unclassified materials regarding the Al Haramain Islamic Foundation, Inc., sent to Bernabei & Katz, LLC in a routine document production on the above date. The government agency did not intend to send that document and reported the loss to the Federal Bureau of Investigation (FBI). This office has been requested to immediately retrieve the document.

Accordingly, we request that you immediately return this U.S. government document, as well as any and all copies (paper or otherwise) of said document. We further request that you safeguard the document in manner that ensures that the document and the classified information are not read or reviewed by anyone.

Please contact Special Agent Frances Hourihan to arrange the collection of the document. Please be aware that any further review, disclosure or dissemination of this classified document and the classified information contained in the document may be a federal crime.

Thank you in advance for the prompt return of this document.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

October 13, 2004

Mr. Asim Ghafoor
AG Consulting Group, PLLC
1054 31st Street, NW, Suite 510
Washington, D.C.

From: Beverly Fetty
Supervisory Special Agent
Washington Field Office

Subject: Inadvertent Production of a Privileged United States Government Document

It was reported to this office that a classified and privileged U.S. government document was inadvertently included among documents provided to the office of Bernabei & Katz, PLLC on August 20, 2004, by a government agency. Lynne Bernabei has informed this office that a copy of this document was subsequently provided to you. This document was not intended to be disclosed and the government employee who provided the document had no authorization to make this disclosure. The inadvertently disclosed document remains the property of the U.S. government.

This document was marked with classification markings at the top of bottom of each page. We have determined that the document was inadvertently included in a package of unclassified materials regarding the Al Haramain Islamic Foundation, Inc., sent to Bernabei & Katz, PLLC in a routine document production on the above date. The government agency did not intend to send that document and reported the loss to the Federal Bureau of Investigation (FBI). This office has been requested to immediately retrieve the document.

Accordingly, we request that you immediately return this U.S. government document, as well as any and all copies (paper or otherwise) of said document. We further request that you safeguard the document in manner that ensures that the document and the classified information are not read or reviewed by anyone.

Please contact Special Agent Frances Hourihan to arrange the collection of the document. Please be aware that any further review, disclosure or dissemination of this classified document and the classified information contained in the document may be a federal crime.

Thank you in advance for the prompt return of this document.

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF OREGON

3
4 AL-HARAMAIN ISLAMIC FOUNDATION, INC.,)
5 et al.)

6 Plaintiffs,)

7 v.)

8 GEORGE W. BUSH,)

9 et al.)

10 Defendants.)

Case No:
3:06-cv-00274-KI

11 **SUPPLEMENTAL DECLARATION OF FRANCES R. HOURIHAN**
12

13 I, Frances R. Hourihan, declare as follows:
14

15 (1) I am a special agent with the Federal Bureau of Investigation ("FBI") assigned to the FBI
16 Washington Field Office, Washington, D.C. I have been a special agent with the FBI since July
17 1998. This declaration supplements my April 11, 2006 declaration previously submitted in this
18 matter and is intended to provide additional detail about the FBI's investigation concerning the
19 classified document that was inadvertently disclosed by a government employee without proper
20 authorization.

21 (2) The statements contained in this declaration are based upon my personal knowledge,
22 upon information provided to me in my official capacity, and upon conclusions and
23 determinations reached and made in accordance therewith.

24 (3) In late August 2004, FBI headquarters received notification that a government document
25 containing classified information had been improperly disclosed to a private party without
26 authorization. On August 31, 2004, after receipt of that notification, the FBI Washington Field
27 Office initiated an investigation to determine the nature and circumstances of the unauthorized
28 disclosure to private counsel for the Al-Haramain Islamic Foundation in Oregon, in connection
with that group being designated as "Specially Designated Global Terrorist" pursuant to the

1 International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701-1706, and Exec.
2 Order No. 13,224.

3 (4) Based on information developed in the investigation, the FBI determined that the
4 disclosure of the classified government document occurred on or about August 20, 2004, and was
5 unauthorized and inadvertent. During the investigation, it was determined that an employee of
6 the Office of Foreign Assets Control ("OFAC"), a Department of Treasury component,
7 inadvertently included the classified government document in a group of unclassified documents
8 that the government employee had assembled and subsequently produced to private counsel in
9 connection with the Treasury designation of the Al-Haramain Islamic Foundation.

10 (5) Prior to the inadvertent disclosure, this classified information had been properly
11 maintained in a secure facility at the Department of Treasury. The FBI investigation showed that
12 the assigned workspace of the government employee who disclosed the classified information, as
13 well as the secure storage for the classified document, were both located within an approved
14 Sensitive Compartmented Information Facility (SCIF) maintained by the Department of
15 Treasury. The investigation also showed that the government employee assembled and copied
16 the unclassified documents intended for disclosure while working within the secure SCIF space.
17 During the unclassified document assembly process and while within the SCIF, the classified
18 document, which was related to the terrorist designation, was inadvertently copied by the
19 government employee and inadvertently included with the unclassified OFAC materials that were
20 collected for disclosure to private counsel. The FBI investigation therefore determined that the
21 original classified government document remained stored within the SCIF maintained by the
22 Department of Treasury.

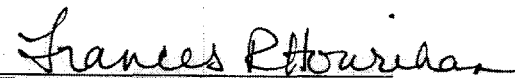
23 (6) In early October 2004, after approximately six weeks of a non-public national security
24 investigation, the FBI made the determination that the unauthorized disclosure was inadvertent
25 and not the result of a knowing or intentional unauthorized disclosure. Because the first weeks
26 of this investigation were devoted to discovering the source and motivation, if any, for the
27 disclosure, the FBI's investigation was necessarily non-public. This initial, non-public FBI
28 national security investigation was necessary for several reasons including, but not limited to, the

1 investigative need to: determine the facts and circumstances relating to this unauthorized
2 disclosure without alerting potential subject(s), known or unknown, to the existence or scope of
3 the investigation which would provide the opportunity to destroy, conceal or alter evidence;
4 identify the full scope of the unauthorized disclosure; assess whether the unauthorized disclosure
5 was an isolated event or an indication of a broader intentional compromise; conduct a security
6 risk assessment of the involved government employees; and make the investigative determination
7 whether the unauthorized disclosure was or was not an intentional or knowing unauthorized
8 disclosure of classified information to a Specially Designated Global Terrorist with the intent to
9 harm the national security of the United States. The FBI could not make efforts to retrieve the
10 classified document during this stage because its investigation would have been thereby
11 publicized, undermining law enforcement and investigative efforts.

12 (7) At the conclusion of the non-public aspect of the national security investigation, FBI
13 personnel with appropriate government security clearances were able to begin the process of
14 retrieving copies of the classified government document from persons not authorized to have
15 possession of the classified document. As noted in my previous declaration, several people who
16 were identified as having unauthorized access to the government document were interviewed by
17 the FBI. See Decl. of Frances R. Hourihan ¶¶ 5-7 (Apr. 11, 2006). Each person interviewed was
18 asked to return all copies of the classified document; asked to identify the location of any copies
19 of the document not in their possession; and advised that they should not further review, disclose,
20 discuss, retain and/or disseminate the classified document or the classified information contained
21 in the document. During this phase of the investigation the following individuals were among
22 those interviewed: Lynne Bernabei was interviewed on October 07, 2004; Wendell Belew was
23 interviewed on October 14, 2004; and Asim Ghafoor was interviewed on October 13, 2004,
24 November 01, 2004, and November 03, 2004. Finally, the copies of the classified document
25 retrieved by FBI personnel were transported by FBI special agents with appropriate government
26 security clearances to a secure and limited access FBI facility that is approved for the storage of
27 classified government materials.

28 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is

1 true and correct to the best of my knowledge and belief.
2

3 
4 Frances R. Hourihan
5 Special Agent
6 Federal Bureau of Investigation
7 Washington, D.C.

8 Executed this 10th day of May, 2006.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC)
FOUNDATION, INC., an Oregon Nonprofit)
Corporation; WENDELL BELEW, a U.S.)
Citizen and Attorney at Law; and) NO: CV-06-27 4-KI
ASIM GHAFOR, a U.S. Citizen and)
Attorney at Law,)
)
Plaintiffs,)
)
v.)
)
GEORGE W. BUSH, President of the)
United States; NATIONAL SECURITY)
AGENCY and KEITH ALEXANDER,)
its Director; OFFICE OF FOREIGN ASSETS)
CONTROL, an office of the United States)
Treasury, and ROBERT W. WERNER, its)
Director; FEDERAL BUREAU OF)
INVESTIGATION and)
ROBERT S. MUELLER III, its Director,)
)
Defendants.)
_____)

**DECLARATION OF JOHN F. HACKETT,
DIRECTOR, INFORMATION MANAGEMENT OFFICE,
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

I, John F. Hackett, hereby declare and state:

1. I am the Director of the Information Management Office of the Office of the Director of National Intelligence ("ODNI"), and I have served in this position since April 3, 2006. The principal responsibilities of the Director of National Intelligence are to serve as the head of the intelligence community; to act as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and to oversee and direct

implementation of the National Intelligence Program. *See* Intelligence Reform and Terrorism Prevention Act of 2004, § 1011, Pub. L. No. 108-458, 118 Stat. 3638, 3644 (amending 50 U.S.C. § 403). Through my supervisory position in the Office of the Director of National Intelligence, I support the Director in carrying out these responsibilities. Because the Director of National Intelligence is also charged with protecting intelligence sources and methods from unauthorized disclosure, *see id.*, 118 Stat. at 3651 (amending 50 U.S.C. § 403-1), this public declaration is appropriately made by me at the direction of the Director of National Intelligence.

2. Prior to my current assignment, I have held various senior and supervisory roles, including Director, Information Management, for the National Counterterrorism Center of ODNI. It is presently my responsibility to protect information related to the functions and activities of certain intelligence agencies that fall under the jurisdiction of the ODNI.

3. My statements herein are based on my personal knowledge of intelligence collection and the information available to me in my capacity as the Director of the Information Management Office of ODNI. Through the exercise of my official duties, I have become familiar with the current litigation as well as the pending Motion to Unseal Records brought by the Oregonian Publishing Company.

Purpose of Declaration

4. I have reviewed both the document that was filed with the Court under seal by Plaintiffs in this case as well as a second classified declaration regarding this document, which I understand will be contemporaneously lodged *ex parte* and *in camera* with the Court and which I understand will supercede the previous classified declaration

lodged *ex parte* and *in camera*, which I have not read. I further understand that the Court has instructed Defendants to make a public declaration with respect to the document at issue, if possible. Based upon my review of the document filed under seal with the Court, it is not possible to describe the document in a meaningful manner without revealing classified information, including classified sources and methods of intelligence. Therefore, in addition to this public declaration and the public declarations of the FBI and of the Department of Treasury, a second declaration has been submitted for an *in camera*, *ex parte* review that sets forth the nature of the document in a classified format.

5. Nevertheless, based upon my review of the document at issue in this case, as well as the second classified declaration, I have concluded that the document is a United States Government report that deals with issues related to national security. The document is currently and properly classified TOP SECRET pursuant to Executive Order No. 12958, as amended, § 1.2. In addition, the information contained in the report is non-segregable -- that is, it is not possible to reasonably redact the classified information and release a meaningful unclassified version. Further, I have reviewed the standards for declassification of materials in Executive Order No. 12958, as amended, and find that none of the standards for declassification have been met. Accordingly, it is my conclusion that any public disclosure of this document (to include that sought by Oregon Publishing Company) reasonably could cause exceptionally grave damage to the national security.

Classification of the Sealed Document

6. The document that has been filed under seal with the Court is clearly marked as "TOP SECRET." Under Executive Order No. 12958, as amended by Executive Order No. 13292 (Mar. 25, 2003), information is classified "TOP SECRET" if unauthorized disclosure of the information reasonably could be expected to cause exceptionally grave damage to United States national security; "SECRET" if unauthorized disclosure of the information reasonably could be expected to cause serious damage to national security; and "CONFIDENTIAL" if unauthorized disclosure of the information reasonably could be expected to cause identifiable damage to the national security. *See id.* § 1.2(a).

7. Executive Order No. 12958, as amended, § 1.4, further provides that information may not be considered for classification unless it falls within seven specifically enumerated categories of information. The categories of classified information contained in the sealed document at issue in this case are those found in § 1.4(c), *i.e.*, intelligence activities (including special activities) and intelligence sources and methods, and § 1.4(g), *i.e.*, scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism.

8. Based upon my review of the information contained in the document filed under seal with the Court, as well as my review of the second classified declaration, I have concluded that the document contains information that either (1) pertains to intelligence activities and is derived from intelligence sources and methods, and/or (2) relates to the vulnerabilities and capabilities of systems, projects, and plans relating to the national security. *See* Executive Order No. 12958, as amended, § 1.4(c), (g). The

information is currently and properly classified as TOP SECRET pursuant to Executive Order No. 12958, as amended, § 1.2(a)(1).

9. The clear markings on the document that has been filed under seal with the Court further indicate that it contains "sensitive compartmented information." While information is protected based on its basic classification level as described *supra* Para. 6, classified information may be protected further under special access programs when the normal restrictions for classified information "are not deemed sufficient to protect the information from unauthorized disclosure." *See* Exec. Order No. 12958, as amended, § 4.3(a)(2). Thus, for example, information concerning or derived from intelligence sources, methods, or analytical processes may be protected with special access procedures exceeding those normally applicable to Top Secret information. *See id.*; *see also* 50 U.S.C. §§ 403-1(i)(1), (j), 435a(f)(5) (discussing "sensitive compartmented information"). The Director of National Intelligence imposes additional safeguards and access requirements for intelligence that contains "sensitive compartmented information," or "SCI." *See* 50 U.S.C. § 403-1(j). Because of the exceptional sensitivity and vulnerability of SCI information, these safeguards and access requirements exceed the access standards that are normally required for information of the same classification level. Thus, the document filed under seal with the Court must be stored in a proper facility certified to contain SCI material, and individuals without appropriate clearances for this information are not permitted access to it.

10. Having carefully reviewed the classified document filed under seal with the Court, as well as the second classified declaration, I have determined that it cannot be declassified. The procedures for declassifying a document are set forth in Executive

Order No. 12958, as amended, Pt. 3. For example, § 3.1(a) of Executive Order No. 12958 provides that “[i]nformation shall be declassified as soon as it no longer meets the standards for classification under this order.” In addition, information may be declassified if it, *inter alia*, is more than 25 years old and has been determined to be of permanent historical value. None of the standards for declassification have been met in this case because disclosure of the information contained in the document could reasonably be expected to cause exceptionally grave damage to national security. Neither the inadvertent disclosure of this document, nor the publication of information that may be derived from or may be contained in this classified document, would operate to declassify the information or information concerning sources and methods. *See id.* § 1.1(b) (“Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.”). In the instant case, the entire document is currently and properly classified, and all copies must be appropriately stored and maintained.

Harm from Disclosure of the Document

11. Although this TOP SECRET document was inadvertently disclosed to a limited number of people, which required the Federal Bureau of Investigation to make efforts to obtain all inadvertently released copies of the classified document, further disclosure of this document would only exacerbate the harm that already has occurred.

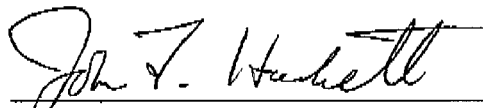
12. Further disclosure would entail widespread distribution of and attention to this document. There are many individuals, organizations, and foreign adversaries, including foreign governments, who may seek to harm U.S. national security interests. Even the release of what might appear to the untrained eye as innocuous information

poses the substantial risk that our adversaries will be able to piece together sensitive information from other sources. Public, widespread access to this classified document would essentially facilitate the study of this document by those who would do us harm.

13. Although this is not an action brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, a similar analysis under FOIA should lead to the conclusion that this document cannot under any circumstances be disclosed. For example, FOIA protects from disclosure records that are "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy," and which are "in fact properly classified pursuant to such Executive Order." *See* 5 U.S.C. § 552(b)(1). The Executive Order establishing such criteria here is Executive Order 12958, as amended. As previously noted, this sealed document is properly classified as TOP SECRET pursuant to the authority of this Executive Order. Also as previously noted, this document has been classified as TOP SECRET because it contains information that either (1) pertains to intelligence activities and is derived from intelligence sources and methods, and/or (2) relates to the vulnerabilities and capabilities of systems, projects, and plans relating to the national security. *See* Executive Order No. 12958, § 1.4(c), (g). Classified information is routinely withheld from release under FOIA pursuant to Exemption 1. Further, as is appropriate in FOIA cases in which Exemption 1 has been asserted to prevent disclosure, Defendants have offered a more detailed classified explanation, *ex parte* and *in camera*, of how unauthorized disclosure could be expected to cause exceptionally grave damage to the national security by revealing, *inter alia*, intelligence activities, intelligence sources or methods, or the vulnerabilities or capabilities of systems, projects, and plans relating to

national security. Therefore, based on the criteria set forth in FOIA Exemption 1, the document filed under seal with the Court would not be disclosed pursuant to FOIA.

I declare under penalty of perjury that the facts set forth above are true and correct. Executed pursuant to 28 U.S.C. § 1746.



John F. Hackett
Director
Information Management Office
Office of the Director of National Intelligence

Executed this 12 day of May, 2006.

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF OREGON
3

AL-HARAMAIN ISLAMIC FOUNDATION,
INC., *et al.*,

Plaintiffs,

No. CV 06-274-KI

v.

GEORGE W. BUSH, *et al.*,

Defendants.

4
5 **DECLARATION OF LYNNE BERNABEI**

6 I, Lynne Bernabei, this 5th day of June, 2006, declare as follows:

7 1. I am an attorney at law, with an office in Washington, D.C.

8 2. Among my clients are the Al Haramain Islamic Foundation, Inc. ("AHIF"), an
9 Oregon nonprofit corporation, as well as two of its directors, Pirouz Sedaghaty (Pete Seda) and
10 Soliman Al-Buthi. I have received a license to represent AHIF and Mr. Al-Buthi, after AHIF's
11 assets were frozen as a result of action by the Treasury Department's Office of Foreign Assets
12 Control ("OFAC").

13 3. I have been representing AHIF and Messrs. Seda and Al-Buthi in matters relating
14 to civil litigation arising from the terrorist attacks in New York and elsewhere on September 11,
15 2001, as well as matters arising from the investigations and designations by OFAC.

16 4. On the late afternoon of Friday, August 20, 2004, I received from OFAC the third
17 of three packets of materials relating to its investigation of AHIF relating to OFAC's potential
18 designation of AHIF as a "specially designated global terrorist" ("SDGT"). OFAC instructed me

1 that, in order to be considered in the designation process, my clients' responses to the packet of
2 materials were due on the morning of Monday, August 23, 2004, i.e., the following work day.

3 5. The individuals who would have had knowledge of the materials in the packet and
4 thus be able to respond effectively were located across the nation and the world. Moreover, both
5 my senior associate and I were leaving that weekend for vacations, and we were unable to
6 respond by Monday morning.

7 6. Upon receiving the packet of materials, I had them copied, and forwarded them to
8 Mr. Seda, Mr. Al-Buthi (in Saudi Arabia), Larry Matasar (Mr. Sedaghary's attorney in Portland,
9 Oregon), Mary Rowland (an attorney in Chicago, Illinois, who is handling AHIF's property
10 matters), and David Cole (a Law Professor at Georgetown University involved in a potential
11 challenge to the OFAC designation). I also discussed the OFAC administrative record with two
12 other attorneys, Asim Ghafoor and Wendell Belew.

13 7. Sometime later in August or September, David Ottaway of the Washington Post
14 reviewed the entire OFAC administrative record, as he was doing an article on the OFAC
15 designation process, and the process by which a designated group, such as AHIF, could
16 challenge its potential or actual designation.

17 8. On October 7, 2004, I subsequently learned from the Federal Bureau of
18 Investigation ("FBI") that included among the materials in the third packet was a sensitive
19 document, which the Treasury Department claimed had been inadvertently released. When the
20 document was provided to me and my co-counsel, it was tabbed and labeled as part of the
21 "unclassified" record supporting a potential designation of AHIF as a SDGT. The cover letter,
22 from OFAC Director Richard Newcomb, also stated that the enclosed materials were
23 unclassified.

1 9. On October 7, 2004, two agents of the FBI visited my office, informed me of this
2 disclosure, and requested to retrieve the document. In response, I returned the copies of the
3 document in my possession, and I prepared and hand-delivered the letter attached and
4 incorporated hereto as Attachment 1.

5 10. On October 13, 2004, an FBI agent called me and told me that I could inform co-
6 counsel in the case that the FBI would be visiting them to retrieve the document that OFAC said
7 had been inadvertently disclosed. I called Mr. Matasar in Portland, Oregon, as the attorney for
8 Pete Seda, a former officer of AHIF, to inform him that the FBI was seeking to retrieve the
9 document. While we were on the telephone discussing the document, Mr. Matasar told me that
10 one or more FBI agents were coming into his office to retrieve the document. He told me later
11 that he returned the document pursuant to the FBI's request. I also called Ms. Rowland in
12 Chicago, and David Cole, in Washington, D.C., shortly thereafter, to let them know that the FBI
13 would be visiting them to retrieve the document. Both told me in subsequent telephone
14 conversations that the FBI had sought the return of this document from them, and that they had
15 provided it to the FBI.

16 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, this 5th day of
17 June 2006, that the foregoing is true and correct to the best of my knowledge,
18 information, and belief.

19
20
21

Lynne Bernabei

LAW OFFICES
BERNABEI & KATZ, PLLC

1773 T STREET, N.W.
WASHINGTON, D.C. 20009-7139

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OF COUNSEL:
PATRICIA IRELAND †
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° ADMITTED IN NY ALSO
* ADMITTED IN CA ALSO
§ ADMITTED IN MA ALSO
‡ ADMITTED IN FL ONLY
‡ ADMITTED IN WI ONLY

By Hand Delivery
October 7, 2004

Beverly Fetty,
Supervisory Special Agent
Washington Field Office
Federal Bureau of Investigation
601 - 4th Street, N.W.
Washington, D.C. 20535

Re: Al Haramain Islamic Foundation, Inc. (U.S.A.) / OFAC

Dear Ms. Fetty:

On behalf of Bernabei & Katz, PLLC, I am returning the only copy that we have of the document referenced in your letter of this date, which was disclosed by the Office of Foreign Assets Control on August 20, 2004, thereby discharging our firm's responsibilities. Mr. Newcomb's letter of August 20, 2004 explicitly stated that all the materials were "unclassified."

Prior to your arrival, we cannot guarantee that the contents of this document were not disclosed to individuals whom we do not know. We had provided a complete set of OFAC's administrative record, as disclosed to us, to our two clients, Mr. Sedaghaty and Mr. Al-Buthe, as well as to our co-counsel, *i.e.*, Lawrence Matasar, Mary Rowland, and David Cole. We also discussed OFAC's administrative record with two other attorneys, *i.e.*, Wendell Belew and Asim Ghafoor. In addition, David Ottaway, of the Washington Post, who we understand is writing an article about OFAC and the Al Haramain Islamic Foundation, Inc., may have seen a copy of this document, based on conversations we had with him, in which he appeared to know of this document.

Sincerely,


Lynne Bernabei

Enc.

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AL-HARAMAIN ISLAMIC FOUNDATION,
INC., *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

No. CV 06-274-KI

DECLARATION OF M. WENDELL BELEW

I, M. Wendell Belew, declare as follows:

1. I am an attorney at law, with an office in Washington, D.C., and one of the plaintiffs in the above-captioned litigation.

2. Among my clients is the Al Haramain Islamic Foundation, Inc. ("AHIF"), an Oregon nonprofit corporation. I have been representing AHIF since January 20, 2004.

3. I have been representing AHIF in matters relating to charitable foundations such as AHIF.

4. In August 2004 I received material relating to the Office of Foreign Assets Control's ("OFAC") potential designation of AHIF as a "specially designated global terrorist" ("SDGT"). When I received the materials I understood that OFAC had voluntarily released the materials to representatives of AHIF and that there were no restrictions on the review, use, or dissemination of any of those materials.

5. On October 14, 2004, I was visited by representatives of the Federal Bureau of Investigation ("FBI"), one of the defendants in the above-captioned lawsuit, and requested to

1 turn over all copies of one of the documents in the materials provided to me in August,
2 specifically a document captioned "TOP SECRET," and to destroy or return any subsequently
3 discovered copies. I was also instructed not to disseminate the document any further.

4 6. I complied fully with this request.

5 7. I understand that the United States has suggested several times that I was
6 responsible for the Document's being available for filing with the court in this case.
7 Specifically, in its May 26, 2006 Memorandum in Support of Defendants' Motion to Prevent
8 Plaintiffs' Access to the Sealed Classified Document, Docket #40, the Government stated:

9 Indeed, after the document's inadvertent disclosure, FBI agents specifically
10 instructed Plaintiffs *not* to further review, disclose, discuss, retain, or disseminate
11 the classified document or classified information contained within the document.
12 Plaintiffs did not abide by these instructions.

13
14 Defendants' Memorandum at 3. On page 6, the Memorandum states:

15
16 Plaintiffs Belew and Ghafoor further represented to the FBI that they had returned
17 to the FBI all copies of the document in their possession. *See id.* ¶ 7.

18 In wholesale disregard of these instructions, on February 28, 2006,
19 Plaintiffs filed a copy of the classified document under seal.

20
21 Defendants' Memorandum at 6. Earlier, in Defendants' Response to Oregonian's Motion dated
22 April 14, 2006 (Docket #24), Defendants stated:

23 Despite these clear instructions, Plaintiffs apparently retained or reacquired the
24 document from someone who had obtained the document as a result of the same
25 inadvertent disclosure.

26
27 8. Since I turned over the Document to the FBI I have not disseminated the
28 Document to any person in any way. More specifically, I was not the source of the
29 Document that has been filed with this court.

30 8. The only subsequent involvement I have had with the Document was in
31 preparation for this litigation in consultation with my attorneys.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
2 is true and correct to the best of my knowledge, information, and belief.
3

4 
5 M. Wendell Belew

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AL-HARAMAIN ISLAMIC FOUNDATION,
INC., *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

No. CV 06-274-KI

DECLARATION OF ASIM GHAFOOR

I, Asim Ghafoor, declare as follows:

1. I am an attorney at law, with an office in Tyson's Corner, Virginia, and one of the plaintiffs in the above-captioned litigation.

2. Among my clients are the Al Haramain Islamic Foundation, Inc. ("AHIF"), an Oregon nonprofit corporation. I have been representing AHIF since 2002.

3. I have been representing AHIF in matters relating charitable foundations such as AHIF.

4. In August 2004 I received material relating to the Office of Foreign Assets Control's ("OFAC") potential designation of AHIF as a "specially designated global terrorist" ("SDGT"). When I received the materials I understood that OFAC had voluntarily released the materials to representatives of AHIF and that there were no restrictions on the review, use, or dissemination of any of those materials.

5. On October 13, I was visited by representatives of the Federal Bureau of Investigation ("FBI"), one of the defendants in the above-captioned lawsuit, and requested to

1 turn over all copies of one of the documents in the materials provided to me in August,
2 specifically a document captioned "TOP SECRET." I was also instructed not to disseminate the
3 document any further. At that time I told the FBI agents that I had an electronic copy of the
4 document on my computer.

5 6. The FBI agents requested custody of my laptop computer in order that the
6 document might be "scrubbed" from it. I gave them custody and they kept the computer for
7 several days, ultimately returning it to me in early November 2004.

8 7. As a result of the FBI requests I gave to the FBI all copies of the document in my
9 possession, both hard copy and electronic copy. Since that time I have not disseminated that
10 document to any person in any way.

11 8. I understand that the United States has suggested several times that I was
12 responsible for the Document's being available for filing with the court in this case.
13 Specifically, in its May 26, 2006 Memorandum in Support of Defendants' Motion to Prevent
14 Plaintiffs' Access to the Sealed Classified Document (Docket #40), the Government stated:

15 Indeed, after the document's inadvertent disclosure, FBI agents specifically
16 instructed Plaintiffs *not* to further review, disclose, discuss, retain, or disseminate
17 the classified document or classified information contained within the document.
18 Plaintiffs did not abide by these instructions.

19
20 Plaintiff's Memorandum at 3. On page 6, the Memorandum states:

21
22 Plaintiffs Belew and Ghafoor further represented to the FBI that they had returned
23 to the FBI all copies of the document in their possession. *See id.* ¶ 7.

24 In wholesale disregard of these instructions, on February 28, 2006,
25 Plaintiffs filed a copy of the classified document under seal.

26
27 Earlier, in Defendants' Response to Oregonian's Motion dated April 14, 2006 (Docket #24),

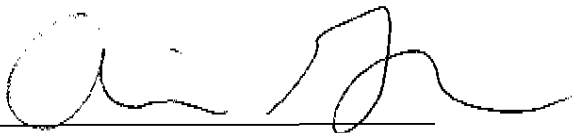
28
29 Defendants stated:
30

1 Despite these clear instructions, Plaintiffs apparently retained or reacquired the
2 document from someone who had obtained the document as a result of the same
3 inadvertent disclosure.
4

5 9. Since I turned over the Document to the FBI I have not disseminated the
6 Document to any person in any way. More specifically, I was not the source of the Document
7 that has been filed with this court.

8 10. The only subsequent involvement I have had with the Document was in
9 preparation for this litigation in consultation with my attorneys.

10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
11 is true and correct to the best of my knowledge, information, and belief.
12

13 
14 _____
Asim Ghafoor

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AL-HARAMAIN ISLAMIC FOUNDATION,
INC., *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

No. CV 06-274-KI

(Document Filed Under Seal)

DECLARATION OF THOMAS H. NELSON

I, Thomas H. Nelson, declare as follows:

DECLARATION NOT FILED ELECTRONICALLY

HARD COPY OF DECLARATION HAND-DELIVERED TO CLERK

FOR FILING UNDER SEAL

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Attorneys for the United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC
FOUNDATION, *et al.*,

CV. 06-274- KI

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

**DEFENDANTS'
MOTION TO DISMISS OR,
IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT**

Pursuant to Rules 12(b)(1) and 56 of the Federal Rules of Civil Procedure, Defendants, through their undersigned counsel, hereby move to dismiss this action or, in the alternative, for summary judgment. The basis for this motion is that the assertion of the military and state secrets privilege and other specified statutory privileges by the United States in this action requires the exclusion of state secrets relevant to the resolution of Plaintiffs' claims. The unavailability of this information requires dismissal or the entry of summary judgment in favor of Defendants.

Defendants' arguments in support of this motion are set forth in the classified *in camera*, *ex parte* and the unclassified versions of Defendants' Memorandum of Points and Authorities in Support of the United States' Assertion of the Military and State Secrets Privilege; and Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, and in the declarations accompanying this motion, including those submitted for *in camera*, *ex parte* review. See Defendants' Notice of Lodging of *In Camera*, *Ex Parte* Materials.

Dated: June 21, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

CARL J. NICHOLS
Deputy Assistant Attorney General

JOSEPH H. HUNT
Director, Federal Programs Branch

s/ Anthony J. Coppolino
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s/ Andrea Gacki

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s/ Andrew H. Tannenbaum

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Attorneys for the United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC
FOUNDATION, *et al.*,

CV. 06-274- KI

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

**DECLARATION OF JOHN D. NEGROPONTE,
DIRECTOR OF NATIONAL INTELLIGENCE**

I, John D. Negroponte, declare as follows:

INTRODUCTION

1. I am the Director of National Intelligence (DNI) of the United States. I have held this position since April 21, 2005. From June 28, 2004, until appointed to be DNI, I served as the United States Ambassador to Iraq. From September 18, 2001, until my appointment in Iraq, I served as the United States Permanent Representative to the United Nations. I have also served as Ambassador to Honduras (1981-1985), Mexico (1989-1993), the Philippines (1993-1996), and as Deputy Assistant to the President for National Security Affairs (1987-1989).

2. In the course of my official duties, I have been advised of this lawsuit and the allegations at issue in this case. The statements made herein are based on my personal knowledge, as well as on information provided to me in my official capacity as DNI, and on my personal evaluation of that information. In personally considering this matter, I have executed a separate classified declaration dated June 21, 2006, and lodged *in camera* and *ex parte* in this case. Moreover, I have read and personally considered the information contained in the *In Camera, Ex Parte* Declaration of Lieutenant General Keith B. Alexander, Director of the

National Security Agency, lodged in this case.

3. The purpose of this declaration is to formally assert, in my capacity as DNI and head of the United States Intelligence Community, the military and state secrets privilege (hereafter “state secrets privilege”), as well as a statutory privilege under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence information, sources and methods that are implicated by the allegations in this case. Disclosure of the information covered by these privilege assertions would cause exceptionally grave damage to the national security of the United States and, therefore, should be excluded from any use in this case. In addition, I concur with General Alexander’s conclusion that the risk is great that further litigation will lead to the disclosure of information harmful to the national security of the United States and, accordingly, this case should be dismissed. *See* Public and *In Camera* Alexander Declaration.

THE DIRECTOR OF NATIONAL INTELLIGENCE

4. The position of Director of National Intelligence was created by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of the Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the U.S. Intelligence Community and as the principal advisor to the President, the National Security Council, and the Homeland Security Council, for intelligence-related matters related to national security. *See* 50 U.S.C. § 403(b)(1), (2).

5. The “United States Intelligence Community” includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of

specialized national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, Drug Enforcement Administration, and the Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with the analysis of intelligence information; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the Intelligence Community. *See* 50 U.S.C. § 401a(4).

6. The responsibilities and authorities of the DNI are set forth in the National Security Act, as amended. *See* 50 U.S.C. § 403-1. These responsibilities include ensuring that national intelligence is provided to the President, the heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and determining, based on proposals submitted by heads of agencies and departments within the Intelligence Community, an annual consolidated budget for the National Intelligence Program for presentation to the President, and for ensuring the effective execution of the annual budget for intelligence and intelligence-related activities, and for managing and allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

7. In addition, the National Security Act of 1947, as amended, provides that “The Director of National Intelligence shall protect intelligence sources and methods from

unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive Orders, or other Presidential directives and access and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible for the establishment of uniform standards and procedures for the grant of access to Sensitive Compartmented Information (“SCI”) to any officer or employee of any agency or department of the United States, and for ensuring consistent implementation of those standards throughout such departments and agencies. *Id.* § 403-1(j)(1), (2).

8. By virtue of my position as the DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entity of the United States. Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me to exercise original TOP SECRET classification authority. My classified declaration, as well as the classified declaration of General Alexander on which I have relied in this case, are properly classified under § 1.3 of Executive Order 12958, as amended, because the public disclosure of the information contained in those declarations could reasonably be expected to cause serious damage to the foreign policy and national security of the United States.

ASSERTION OF THE STATE SECRETS PRIVILEGE

9. After careful and actual personal consideration of the matter, I have determined that the disclosure of certain information implicated by Plaintiffs’ claims—as set forth here and described in more detail in my classified declaration and in the classified declaration of General Alexander—would cause exceptionally grave damage to the national security of the United

States and, thus, must be protected from disclosure and excluded from this case. Thus, as to this information, I formally invoke and assert the state secrets privilege. In addition, it is my judgment that any attempt to proceed in the case will substantially risk the disclosure of the privileged information described briefly herein and in more detail in the classified declarations, and will cause exceptionally grave damage to the national security of the United States.

10. Through this declaration, I also invoke and assert a statutory privilege held by the DNI under the National Security Act to protect intelligence sources and methods implicated by this case. *See* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory privilege for intelligence information and sources and methods is coextensive with my state secrets privilege assertion.

INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE

11. My assertion of the state secrets and statutory privileges in this case pertains to four categories of information which are necessarily described in general, unclassified terms.

- (i) First, I assert privilege to protect against the disclosure of information regarding the specific nature of the al Qaeda threat.
- (ii) Second, I assert privilege to protect information regarding the Terrorist Surveillance Program.
- (iii) Third, I assert privilege with respect to information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program or under any other government program, specifically including information responsive to Plaintiffs' interrogatory requests numbers 1 to 20.
- (iv) Fourth, I assert privilege with respect to information pertaining to a sealed document before the Court, including information in response to Plaintiffs' interrogatory requests numbers 21-25.

My In Camera, Ex Parte Declaration describes these categories in further detail.

12. In an effort to counter the al Qaeda threat, the President of United States authorized the NSA to utilize its SIGINT capabilities to collect certain international communications originating or terminating in the United States where there are reasonable

grounds to conclude that one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization. This program, known as the Terrorist Surveillance Program (TSP), is designed to detect and prevent another terrorist attack on the United States. To disclose additional information regarding the nature of the al Qaeda threat or to discuss the TSP in any greater detail, however, would disclose classified intelligence information, sources, and methods, thereby enabling adversaries of the United States to avoid detection by the U.S. Intelligence Community and/or take measures to defeat or neutralize U.S. intelligence collection, posing a serious threat of damage to the United States' national security interests. Thus, any further elaboration on the public record concerning the al Qaeda threat or the TSP would reveal information that would cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declaration of General Alexander that I considered in making this privilege assertion, as well as my own separate classified declaration, provide a more detailed explanation of the information at issue and the harms to the national security that would result from its disclosure.

13. Plaintiffs also make allegations regarding whether they have been subject to surveillance by the NSA. The United States can neither confirm nor deny allegations concerning intelligence activities, sources, methods, or targets. The harm of revealing targets of foreign intelligence surveillance should be obvious. If an individual knows or suspects he is a target of U.S. intelligence activities, he would naturally tend to alter his behavior to take new precautions against surveillance, thereby compromising valuable intelligence collection. Also, confirming or denying whether a particular person is subject to surveillance would tend to reveal intelligence information, sources, and methods that are at issue in the surveillance, thus compromising those methods and severely undermining surveillance activities in general. Even

confirming that individuals are *not* the target of intelligence activities would cause harm to the national security for other reasons as well. For example, if the government were to confirm in this case and others that specific individuals are not targets of surveillance, but later refused to comment (as it would have to) in a case involving an actual target, a person could easily deduce by comparing such responses that the person in the latter case is a target. Confirming that individuals are not targets of surveillance would also tend to reveal critical intelligence sources and methods. For example, identifying who is not under surveillance would provide insight into the scope of government surveillance on a particular matter, reveal directly to that individual that they have avoided surveillance and may communicate freely if they wish to act against U.S. interests, and also identify for others an individual who might be a secure channel of communications. Thus, as a matter of course, the NSA cannot publicly confirm or deny whether *any* individual is subject to surveillance, because to do so would tend to reveal actual targets, sources, and methods. As with the other categories of information discussed in this declaration, any further elaboration on the public record concerning these matters would reveal information that would cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declaration of General Alexander that I considered in making this privilege assertion, as well as my own separate classified declaration, provide a more detailed explanation of the information at issue, the reasons why it is implicated by Plaintiffs' claims, and the harms to national security that would result from its disclosure.

14. Finally, I also assert a claim of state secrets and statutory privilege with respect to information contained in and pertaining to the sealed document filed in this case. This document was the subject of the Declaration of John F. Hackett, Director, Information Management Office, Office of the Director of National Intelligence, in connection with a motion before this Court to unseal the document. I have personally reviewed the matter raised by Mr. Hackett's declaration,

including the document itself. I hereby concur in Mr. Hackett's findings, also set forth in other *in camera* submissions concerning the document, that the document remains properly classified, cannot be declassified, and that any further disclosure would cause exceptionally grave harm to national security, notwithstanding the fact that the document was inadvertently disclosed to the Plaintiffs in this case in connection with a Treasury Department proceeding. Such unauthorized disclosures do not determine whether state secrets should be protected where there would be further harm to national security if they are not excluded under the privilege. I specifically concur that the information in the document should remain protected from disclosure and, upon personal consideration, assert privilege in order to exclude this document from further proceedings in this case. My *In Camera* Declaration discusses this issue further.

CONCLUSION

15. In sum, I formally assert the state secrets privilege, as well as a statutory privilege under the National Security Act, 50 U.S.C. § 403-1(i)(1), to prevent the disclosure of:

(i) information regarding the specific nature of the al Qaeda threat; (ii) information regarding the Terrorist Surveillance Program; (iii) information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program or under any other government program, specifically including information responsive to Plaintiffs' interrogatory requests; and (iv) information pertaining to a sealed document before the Court, also including information responsive to Plaintiffs' interrogatory requests. These matters, and the grave harm to the national security that would follow from the disclosure of information regarding them, are detailed in the two classified declarations that are available for the Court's *in camera* and *ex parte* review. Moreover, because proceedings in this case risk disclosure of privileged and classified intelligence-related information, I join with General Alexander in respectfully requesting that the Court dismiss this case to stem the harms to the

national security of the United States that will occur if it is litigated.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: _____

6/21/2006

John D. Negroponte

JOHN D. NEGROPONTE
Director of National Intelligence

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC
FOUNDATION, *et al.*,

CV. 06-274-KI

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

**DECLARATION OF LIEUTENANT GENERAL KEITH B. ALEXANDER,
DIRECTOR, NATIONAL SECURITY AGENCY**

I, Keith B. Alexander, declare as follows:

INTRODUCTION

1. I am the Director of the National Security Agency (NSA), an intelligence agency within the Department of Defense. I am responsible for directing the NSA, overseeing the operations undertaken to carry out its mission and, by specific charge of the President and the Director of National Intelligence, protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 12958, 60 Fed. Reg. 19825 (1995), as amended on March 25, 2003, and Department of Defense Directive No. 5200.1-R, Information Security Program Regulations, 32 C.F.R. § 159a.12 (2000).

2. The purpose of this declaration is to support the assertion of a formal claim of the military and state secrets privilege (hereafter “state secrets privilege”), as well as a statutory privilege, by the Director of National Intelligence (DNI) as the head of the intelligence community. In this declaration, I also assert a statutory privilege with respect to information about NSA activities. For the reasons described below, and in my classified declaration

provided separately to the Court for *in camera* and *ex parte* review, the disclosure of the information covered by these privilege assertions would cause exceptionally grave damage to the national security of the United States. The statements made herein, and in my classified declaration, are based on my personal knowledge of NSA operations and on information made available to me as Director of the NSA.

THE NATIONAL SECURITY AGENCY

3. The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. Under Exec. Order 12333, § 1.12.(b), as amended, NSA's cryptologic mission includes three functions: (1) to collect, process, and disseminate signals intelligence ("SIGINT") information, of which communications intelligence ("COMINT") is a significant subset, for (a) national foreign intelligence purpose, (b) counterintelligence purposes, and (c) the support of military operations; (2) to conduct information security activities; and (3) to conduct operations security training for the U.S. Government.

4. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important, is to gain information required to direct U.S. resources as necessary to counter external threats. The second reason is to obtain information necessary to the formulation of the United States' foreign policy. Foreign intelligence information provided by NSA is thus relevant to a wide range of important issues, including military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign aspects of international narcotics trafficking.

5. In the course of my official duties, I have been advised of this litigation and reviewed the allegations at issue. As described herein and in my separate classified declaration, information implicated by Plaintiffs' claims is subject to the state secrets privilege assertion in

this case by the DNI. The disclosure of this information would cause exceptionally grave damage to the national security of the United States. In addition, it is my judgment that any attempt to proceed in the case will substantially risk disclosure of the privileged information and will cause exceptionally grave damage to the national security of the United States.

6. Through this declaration, I also hereby invoke and assert NSA's statutory privilege to protect information related to NSA activities described below and in more detail in my classified declaration. NSA's statutory privilege is set forth in section 6 of the National Security Agency Act of 1959 (NSA Act), Public Law No. 86-36 (codified as a note to 50 U.S.C. § 402). Section 6 of the NSA Act provides that "[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency [or] any information with respect to the activities thereof. . . ." By this language, Congress expressed its determination that disclosure of any information relating to NSA activities is potentially harmful. Section 6 states unequivocally that, notwithstanding *any* other law, NSA cannot be compelled to disclose *any* information with respect to its authorities. Further, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. Thus, to invoke this privilege, NSA must demonstrate only that the information to be protected falls within the scope of section 6. NSA's functions and activities are therefore protected from disclosure regardless of whether or not the information is classified.

INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE

7. I support the DNI's assertion of the state secrets privilege, and assert NSA's statutory privilege with respect to the following categories of information which are described in general, unclassified terms: (i) information regarding the Terrorist Surveillance Program and (ii) information that would tend to confirm or deny whether the Plaintiffs in this action have been

subject to surveillance under the Terrorist Surveillance Program. My *In Camera, Ex Parte* Declaration describes this information in further detail.

8. Following the attacks of September 11, 2001, the President of United States authorized the NSA to utilize its SIGINT capabilities to collect certain international communications originating or terminating in the United States where there are reasonable grounds to conclude that one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization. This program, known as the Terrorist Surveillance Program (TSP), is designed to detect and prevent another terrorist attack on the United States. While the existence of the TSP has been acknowledged by the President, information about the program remains classified and could not be disclosed without revealing critical intelligence information, sources, and methods, thereby harming national security. Any further elaboration on the public record concerning the TSP would reveal information that would cause the very harms that the DNI's assertion of the state secrets privilege is intended to prevent. My separate classified declaration provides a more detailed explanation of the information at issue and the harms to national security that would result from its disclosure.

9. Plaintiffs also make allegations regarding whether they have been subject to surveillance by the NSA. As the DNI explains, regardless of whether these allegations are accurate or not, the United States can neither confirm nor deny alleged NSA activities or targets. To do otherwise when challenged in litigation would result in the exposure of intelligence information, sources, and methods and would severely undermine surveillance activities in general. For example, if an individual knows or suspects he is a target of U.S. intelligence activities, he would alter his behavior to take new precautions to defeat surveillance and deprive the United States of valuable intelligence information. Identifying the targets of surveillance would also tend to reveal intelligence information, sources, and methods that are at issue in the

surveillance, again compromising those methods and severely undermining surveillance activities in general. Likewise, confirming that individuals are *not* the target of intelligence activities would cause harm to the national security. If the NSA denied allegations about intelligence targets in cases where such allegations were false, but remained silent in cases where the allegations were accurate, it would tend to reveal that the individuals in the latter cases were targets. Confirming who is not subject to surveillance would also tend to reveal critical intelligence sources and methods, for example, by disclosing the scope of surveillance, or indicating who has avoided surveillance and may be a safe channel for communications. Accordingly, any confirmation or denial by NSA as to who is or is not subject to surveillance would reveal sensitive classified information. Any further elaboration on the public record concerning these matters would reveal information that would cause the very harms that the DNI's assertion of the state secrets privilege is intended to prevent. My separate classified declaration provides a more detailed explanation of the information at issue and the harms to national security that would result from its disclosure.

CONCLUSION

10. In sum, I support the DNI's assertion of the state secrets privilege and statutory privilege to prevent the disclosure of the information detailed in my classified declaration that is available for the Court's *in camera* and *ex parte* review generally concerning: (i) information regarding the Terrorist Surveillance Program, and (ii) information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program. Moreover, because proceedings in this case risk disclosure of privileged and classified intelligence-related information, I respectfully request that the Court not only protect that information from disclosure, but also dismiss this case to stem the harms to the national security of the United States that will occur if it is litigated.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: _____

21 June 2006



LT. GEN. KEITH B. ALEXANDER
Director, National Security Agency



AL-HARAMAIN ISLAMIC FOUNDATION, INC., an Oregon Nonprofit Corporation, Wendell Belew, a U.S. Citizen and Attorney at Law, Asim Ghafoor, a U.S. Citizen and Attorney at Law, Plaintiffs,

v.

George W. BUSH, President of the United States, National Security Agency, Keith B. Alexander, its Director, Office of Foreign Assets Control, an office of the United States Treasury, Robert W. Werner, its Director, Federal Bureau of Investigation, Robert S. Mueller, III, its Director, Defendants,

and

Oregon Publishing Company,
Intervenor.

No. 06-274-KI.

United States District Court,
D. Oregon.

Sept. 7, 2006.

Background: Islamic foundation, a director and its attorneys sued government,

claiming that telephone conversations were monitored in violation of Foreign Intelligence Surveillance Act (FISA). Claimants filed motion to compel discovery, and government filed motion to dismiss and motion to prevent access to sealed classified document, on grounds that content of document was state secret.

Holdings: The District Court, King, J., held that:

- (1) claimants showed strong need for document, which allegedly showed that government had undertaken surveillance in question;
- (2) fact that government maintained surveillance program was not secret;
- (3) there would be no harm to national security, to extent that it was disclosed that claimants were subjected to surveillance; and
- (4) broader concerns over national security precluded access to document.

Ordered accordingly.

1. Witnesses ⇌216(1)

State secrets privilege, under which government may deny discovery of military and state secrets, is absolute, provided government properly invokes privilege and court has determined that there is reasonable danger national security would be harmed by disclosure of material in question.

2. Witnesses ⇌216(1)

State secrets privilege may require dismissal of case (1) if specific evidence must be removed from the case as privileged, and plaintiff can no longer prove the prima facie elements of the claim without that evidence, (2) if the defendant is unable to assert a valid defense without evidence covered by the privilege, or (3) even if the plaintiff is able to produce nonprivileged evidence, the very subject matter of the action is a state secret.

3. Witnesses ⇌216(1)

Fact that government maintained surveillance program, involving warrantless wiretapping of telephone conversations where one party was located outside of United States, was not secret for purpose of asserting state secrets privilege as defense to request, by Islamic foundation, a director and its counsel, suing government for violation of Foreign Intelligence Surveillance Act (FISA), that records of wiretapped telephone conversations between foundation and attorneys be released. Foreign Intelligence Surveillance Act of 1978, §§ 101-111, 50 U.S.C.A. §§ 1801-1811.

4. Records ⇌32

There would be no harm to national security, as required for state secret privilege to bar disclosure of requested information contained in sealed document, requested by Islamic foundation, its director and their attorneys, suing government for conducting warrantless wiretapping in violation of Foreign Intelligence Surveillance Act (FISA), to extent that disclosure would simply confirm publicly known fact that claimants were subjected to surveillance, and would not release additional information regarding surveillance. Foreign Intelligence Surveillance Act of 1978, §§ 101-111, 50 U.S.C.A. §§ 1801-1811.

5. Records ⇌32

State secrets privilege could not be applied in suit alleging that Islamic foundation, its director and attorneys were subjected to surveillance that was illegal under Foreign Intelligence Surveillance Act (FISA), on grounds that entire suit turned on sealed document that would allegedly reveal that government conducted warrantless wiretapping of claimants' telephone conversations; government had acknowledged warrantless wiretapping, which was subject matter of case. For-

eign Intelligence Surveillance Act of 1978, §§ 101–111, 50 U.S.C.A. §§ 1801–1811.

6. Records ☞32

Concern over national security precluded grant of access to entire sealed document, allegedly showing that government intercepted telephone conversations involving Islamic foundation, its director and attorneys, in violation of Foreign Intelligence Surveillance Act (FISA), subject to right of claimants to submit affidavits in camera supporting their right to make prima facie case, following which court would consider release of documents with redactions. Foreign Intelligence Surveillance Act of 1978, §§ 101–111, 50 U.S.C.A. §§ 1801–1811.

7. Witnesses ☞184(2)

The relevant inquiry in deciding whether a statute preempts a federal common law privilege is whether the statute speaks directly to the question otherwise answered by federal common law.

8. Records ☞32

Court would not unseal document, allegedly showing monitoring of telephone conversations between Islamic foundation, its director and lawyers, allegedly showing violation of Foreign Intelligence Surveillance Act (FISA), even though document had at one point been inadvertently released. Foreign Intelligence Surveillance Act of 1978, §§ 101–111, 50 U.S.C.A. §§ 1801–1811.

Department of Justice, Washington, D.C., for Defendants.

Charles F. Hinkle, Emilie K. Edling, Stoel Rives, LLP, Portland, OR, for Intervenor.

OPINION AND ORDER

KING, District Judge.

Plaintiffs Al-Haramain Islamic Foundation, Inc., Wendell Belew, and Asim Ghaffoor filed suit against George W. Bush, the National Security Agency (“NSA”), the Office of Foreign Assets Control (“OFAC”), the Federal Bureau of Investigation (“FBI”), and the respective agency directors (collectively, “the government”) for violations of the Foreign Intelligence Surveillance Act (“FISA”), the Separation of Powers clause, the Fourth, First and Sixth Amendments to the United States Constitution, and the International Convention for the Suppression of the Financing of Terrorism. The government has filed a Motion to Dismiss or, in the Alternative, for Summary Judgment (# 58) and a Motion to Prevent Plaintiffs’ Access to the Sealed Classified Document (# 39). Plaintiffs have filed a Motion for Order Compelling Discovery (# 35). Oregonian Publishing Company has filed a Motion to Intervene and to Unseal Records (# 7).

For the reasons described herein, the government’s Motion to Dismiss is denied, and its Motion for Summary Judgment is denied with leave to renew. The government’s Motion to Prevent Plaintiffs’ Access to the Sealed Classified Document is granted. Plaintiffs’ Motion for Order Compelling Discovery is denied with leave to renew. Oregonian Publishing Company’s Motion to Intervene was previously granted on April 25, 2006, and its Motion to Unseal Records is denied.

Jon B. Eisenberg, Attorney at Law, Oakland, CA, Lisa R. Jaskol, Attorney at Law, Encino, CA, Thomas H. Nelson, Zaha S. Hassan, Thomas H. Nelson & Associates, Jessica Ashlee Albies, Law Office of J. Ashlee Albies, Steven Goldberg, Portland, OR, for Plaintiffs.

Andrea Marie Gacki, Andrew H. Tannenbaum, Anthony J. Coppelino, U.S.

BACKGROUND

I. *Factual Background*

On December 17, 2005, in a radio address, and in response to an article the day before in *The New York Times*, President George W. Bush announced that he had authorized “the interception of international communications of people with known links to al Qaeda and related terrorist organizations” (“Surveillance Program”) after the September 11, 2001 attacks.¹ President’s Radio Address (Dec. 17, 2005), available at <http://www.whitehouse.gov/news/releases/2005/12/20051217.html>. Attorney General Alberto Gonzalez subsequently confirmed that the Surveillance Program intercepts communications where one party to the communication is outside the United States and the government has a reasonable basis to believe that at least one party to the communication is affiliated with, or working in support of, al Qaeda.

Plaintiffs allege in their Complaint that in February 2004 OFAC froze Al-Haramain’s assets while investigating whether Al-Haramain was engaged in terrorist activities. At that time, Al-Haramain was affiliated with and supported by Al-Haramain Islamic Foundation, a charity in Saudi Arabia. Plaintiffs allege that Al-Haramain’s assets were frozen as a result of warrantless electronic surveillance between a director or directors of Al-Haramain and its attorneys, Belew and Ghafoor. Plaintiffs also allege that in March and April 2004 the NSA engaged in electronic surveillance of communications between Al-Haramain’s director or directors and Belew and Ghafoor, without obtaining a court order or otherwise following the procedures required under FISA. They

further allege that in May 2004, the NSA turned over logs of these conversations to OFAC, which subsequently identified Al-Haramain as a “specially designated global terrorist” in September 2004.

The government offers some additional information about Al-Haramain. It explains that the identification of Al-Haramain as a specially designated global terrorist was due to its having provided support to al Qaeda, Osama bin Laden, and other specially designated global terrorists. In addition, the United Nations Security Council has identified Al-Haramain as an entity belonging to or associated with al Qaeda. The government also explains that Soliman Al-Buthi,² a director of Al-Haramain and a citizen of Saudi Arabia, has been identified as a specially designated global terrorist.

Plaintiffs seek a declaration that the surveillance of them was unlawful, seek disclosure of the communications, information, and records obtained as a result of the surveillance, along with the subsequent destruction of such information and records, seek to enjoin warrantless surveillance of plaintiffs, seek \$1,000 or \$100 per day for each violation of FISA, and seek punitive damages of \$1,000,000, costs and attorney fees.

Along with their Complaint, plaintiffs filed a document under seal with the Court (the “Sealed Document”). OFAC inadvertently disclosed this document to counsel for Al-Haramain in late August 2004 as part of a production of unclassified documents relating to Al-Haramain’s potential status as a specially designated global terrorist.

1. The government refers to the program as the “Terrorist Surveillance Program” or “TSP” in its briefing, while plaintiffs refer to the program as the “warrantless surveillance program.”

2. The government spells this individual’s name as Al’Buthe, but I will employ plaintiffs’ spelling.

Lynne Bernabei, an attorney for Al-Haramain and for two of its directors, Al-Buthi and Pirouz Sedaghaty (a.k.a. Pete Seda), testified in a declaration about the circumstances surrounding her dissemination of the Sealed Document. Upon receiving the packet of materials from OFAC, she copied and disseminated the materials, including the pertinent document which was labeled "TOP SECRET," to Al-Haramain's directors and Bernabei's co-counsel. In August or September, a reporter from the Washington Post reviewed these documents for an article he was researching. On October 7, 2004, Bernabei learned from the FBI that included among the produced documents was a sensitive document that OFAC claimed had been inadvertently released. At the request of the FBI, Bernabei and her co-counsel returned their copies of the sensitive document to the FBI. The FBI did not pursue Al-Haramain's directors, whom the government describes as "likely recipients" of the document, to ask them to return their copies.

The government asserts that the Sealed Document carries a classification of "TOP SECRET" and that it contains "sensitive compartmented information" or "SCI." The Sealed Document is now in the Secure Compartmentalized Information Facility at the FBI office in Portland ("SCIF").

II. Procedural Background

On March 17, 2006, the Oregonian Publishing Company filed a Motion to Intervene and to Unseal Records. On May 22, 2006, plaintiffs filed a Motion for Order Compelling Discovery, seeking to compel the government to respond to interrogatories requesting information about electronic surveillance of the plaintiffs and information regarding the reasons for classifying the Sealed Document. On May 26, 2006, the government filed a Motion to Prevent Plaintiffs' Access to the Sealed Classified Document.

On June 21, 2006, the government filed a Motion to Dismiss or, in the Alternative, for Summary Judgment. In this motion, the government asserts the military and state secrets privilege ("state secrets privilege"), arguing that the case should be dismissed or, in the alternative, that summary judgment should be granted in favor of the government based on the privilege. In support of its assertion of the privilege, the government provided unclassified declarations of John D. Negroponte, Director of National Intelligence, and Lieutenant General Keith B. Alexander, Director, National Security Agency. In addition, the government lodged classified materials for *in camera*, *ex parte* review. Specifically, the government submitted classified declarations of Negroponte and Alexander, as well as classified versions of its memorandum and reply in support of its motion to dismiss, and its opposition to plaintiffs' motion to compel. Plaintiffs objected to the lodging of the materials for *in camera*, *ex parte* review.

In order to better prepare myself for oral argument, and to assess the government's assertion of the state secrets privilege, I ruled on August 18, 2006 that I would review the government's *in camera*, *ex parte* materials filed with the Court on June 21, 2006 and July 25, 2006. The Ninth Circuit has noted that it is "unexceptionable" for the government to elaborate on public filings with *in camera* submissions and for judges to review such filings to determine the validity of the claim of privilege. *Kasza v. Browner*, 133 F.3d 1159, 1169 (9th Cir.1998) (collecting cases); *see also United States v. Ott*, 827 F.2d 473, 476-77 (9th Cir.1987) (*ex parte*, *in camera* review of FISA material does not deprive a defendant of due process). The D.C. Circuit has noted that it is also "well settled" that evaluation of the legitimacy of a state secrets privilege claim should not involve the participation of

plaintiff's counsel in the *in camera* examination of putatively privileged material. *Ellsberg v. Mitchell*, 709 F.2d 51, 61 (D.C.Cir.1983) (describing district court and court of appeals inspection of *in camera* submissions). However, since the government had not yet asserted the state secrets privilege at the time of filing the *in camera*, *ex parte* declarations on April 14, 2006 and May 12, 2006, supporting its opposition to the Oregonian's motion, I declined to review those submissions.

DISCUSSION

I. *The State Secrets Privilege*

[1] The government's assertion of the state secrets privilege is the threshold issue in this case. According to the government, its invocation of the privilege requires that plaintiffs' case be dismissed for several alternative reasons, that it supports the government's motion to prevent plaintiffs' access to the Sealed Document, and that it justifies the denial of the plaintiffs' motion for an order compelling discovery.

The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military and state secrets. *United States v. Reynolds*, 345 U.S. 1, 7-8, 73 S.Ct. 528, 97 L.Ed. 727 (1953); *Kasza*, 133 F.3d at 1165. Once the government properly invokes the privilege, the court's task is to determine whether there is a reasonable danger that national security would be harmed by the disclosure of state secrets. *Kasza*, 133 F.3d at 1166. Once the court is so satisfied, the privilege is absolute. *Id.*

The state secrets privilege does not allow a balancing of necessity to the party seeking disclosure against potential harm from disclosure. *Reynolds*, 345 U.S. at 11, 73 S.Ct. 528; *Kasza*, 133 F.3d at 1166. Indeed, the court must treat the invocation of the privilege with the "utmost deference" and apply a "narrow" scope of re-

view when evaluating the claim. *Kasza*, 133 F.3d at 1166. However, the Supreme Court in *Reynolds* noted that where there is a strong showing of necessity, the assertion of privilege should not be "lightly accepted." *Reynolds*, 345 U.S. at 11, 73 S.Ct. 528.

[2] The state secrets privilege may require dismissal of a case for any of three reasons: (1) if specific evidence must be removed from the case as privileged, but plaintiff can no longer prove the *prima facie* elements of the claim without that evidence; (2) if the defendant is unable to assert a valid defense without evidence covered by the privilege; (3) even if the plaintiff is able to produce nonprivileged evidence, the "very subject matter of the action" is a state secret. *Kasza*, 133 F.3d at 1166.

Courts have characterized outright dismissal of a suit based on the state secrets privilege as a "drastic" and "draconian" remedy. *In re United States*, 872 F.2d 472, 477 (D.C.Cir.1989); *Fitzgerald v. Penthouse Int'l, Ltd.*, 776 F.2d 1236, 1242 (4th Cir.1985). Indeed, one court has noted that "whenever possible, sensitive information must be disentangled from nonsensitive information to allow for the release of the latter." *Ellsberg*, 709 F.2d at 57. However, courts have recognized that there are inherent limitations in trying to separate classified and unclassified information, comparing contemporary electronic intelligence gathering to the construction of a "mosaic," from which pieces of "seemingly innocuous information" can be analyzed and cobbled together to reveal the full operational picture. *Kasza*, 133 F.3d at 1166 (quoting *Halkin v. Helms*, 598 F.2d 1, 8 (D.C.Cir.1978)).

In attempting to limit the application of the state secrets privilege and allow cases to proceed despite the absence of some privileged information, courts have en-

dorsed the item-by-item *in camera* review of evidence to determine which evidence was properly subject to the state secrets privilege, or have encouraged other procedural innovations to allow trials to proceed while limiting disclosure of information covered by the privilege. *See e.g., In re United States*, 872 F.2d at 479 (item-by-item *in camera* review of evidence for privilege was within the district court's discretion); *Ellsberg*, 709 F.2d at 64 (recognizing that the trial judge had discretion to develop procedural innovations to ensure that the government justifies its privilege); *Hepting v. AT & T Corp.*, 439 F.Supp.2d 974, 1010 (N.D.Cal.2006) (requesting guidance from the parties on how best to carry out the court's duty to disentangle sensitive information from non-sensitive information, including a proposal to appoint a special master to consider classified evidence).

A. *Procedural Invocation of the Privilege*

The parties do not dispute that the government followed the proper steps to invoke the privilege when the heads of the responsible departments lodged a formal claim of privilege. *See Reynolds*, 345 U.S. at 7, 73 S.Ct. 528.

B. *Plaintiffs' Showing of Necessity for the Information*

I must next determine whether plaintiffs have demonstrated a strong showing of necessity for the information over which the government claims the privilege. *Reynolds*, 345 U.S. at 11, 73 S.Ct. 528. While plaintiffs expressly state that they have no need to learn any secret information about the nature and severity of the al Qaeda threat, or about the means and methods of the Surveillance Program, they have asserted a need for information contained in the Sealed Document. According to plaintiffs, the document shows that their communications were intercepted under

the Surveillance Program, demonstrating their standing to sue, and "bolstering . . . the inference that defendants had the requisite intent for a FISA violation." Pls.' Mem. in Opp'n to Defs.' Mot. to Dismiss at 15. Accordingly, plaintiffs need some information in the Sealed Document to establish their standing and a *prima facie* case, and they have no other available source for this information. *See Reynolds*, 345 U.S. at 11, 73 S.Ct. 528. As a result, I cannot "lightly accept" the government's claim of privilege. *Id.*

C. *What Information is Secret*

[3] The government lists four categories of information that it says are implicated by this case, and that it contends must be protected from disclosure: (i) information regarding the al Qaeda threat, (ii) information regarding the Surveillance Program; (iii) information that would confirm or deny whether plaintiffs have been subject to surveillance under the Surveillance Program or under any other government program; and (iv) information pertaining to the Sealed Document.

Prior to determining whether the state secrets privilege requires dismissal of plaintiff's case, I first determine whether this information qualifies as a secret. *Hepting*, 439 F.Supp.2d at 986; *El-Masri v. Tenet*, 437 F.Supp.2d 530, 536 (E.D.Va. 2006), *American Civil Liberties Union v. Nat'l Security Agency*, 438 F.Supp.2d 754, 763 (E.D.Mich.2006).

Taking the second category of information first, I summarize what has been publicly disclosed by official sources about the Surveillance Program. President George W. Bush announced in a radio address that he had authorized the NSA to begin a program to intercept international communications of people with known links to al Qaeda and related terrorist organizations. He explained generally how it works:

The activities I authorized are reviewed approximately every 45 days. Each review is based on a fresh intelligence assessment of terrorist threats to the continuity of our government and the threat of catastrophic damage to our homeland. During each assessment, previous activities under the authorization are reviewed. The review includes approval by our nation's top legal officials, including the Attorney General and the Counsel to the President. I have reauthorized this program more than 30 times since the September the 11th attacks, and I intend to do so for as long as our nation faces a continuing threat from al Qaeda and related groups.

President's Radio Address (Dec. 17, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/12/20051217.html>. It is clear from this description that the government does not seek a warrant prior to intercepting communications under the Surveillance Program.

Two days later, Attorney General Alberto Gonzalez verified that the Surveillance Program intercepts communications where one party to the communication is outside the United States and the government has "a reasonable basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda." Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence (Dec. 19, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/12/20051219-1.html>.

In addition, the United States Department of Justice issued a 42-page white paper explaining its legal theories in support of the Surveillance Program. *See* U.S. Department of Justice, *Legal Author-*

ities Supporting the Activities of the National Security Agency Described By the President (Jan. 19, 2006), *available at* <http://www.usdoj.gov/opa/whitepaperonnsa/legalaauthorities.pdf>.

Finally, the public filings in this case disclose other details about the program. Negroponte testifies in his public affidavit, for example, that the NSA utilizes its "SIGINT [signals intelligence] capabilities to collect certain international communications originating or terminating in the United States where there are reasonable grounds to conclude that one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization." Negroponte Unclassified Decl. ¶ 12.

As a result of these official statements and publications, the existence of the Surveillance Program is not a secret, the subjects of the program are not a secret, and the general method of the program—including that it is warrantless—is not a secret. As Judge Walker pointed out in *Hepting*, the government has freely acknowledged that with respect to surveillance of communications content, it has "disclosed the universe of possibilities in terms of *whose* communications it monitors and *where* those communicating parties are located." 439 F.Supp.2d at 996 (emphasis in original).

With regard to the third and fourth categories of information—whether plaintiffs were subject to surveillance and information contained in the Sealed Document—I summarize what has been publicly disclosed. Both the foundation Al-Haramain and one of its directors, Al-Buthi, are "specially designated global terrorists." Plaintiffs Belew and Ghafoor are lawyers who office in the United States and who represent Al-Haramain. Al-Buthi and Sedaghaty are directors of Al-Haramain who are believed to be living overseas, and Al-Bu-

thi is a citizen of Saudi Arabia. Al-Buthi, Sedaghaty, Belew and Ghafoor received a copy of the Sealed Document, among other individuals including a reporter at the Washington Post. As a result of receiving the document, Al-Buthi, Sedaghaty, Belew and Ghafoor know what information the Sealed Document contains, which means they know whether or not the government has conducted electronic surveillance of communications between Al-Haramain's director or directors and Belew and Ghafoor.³

Based on this information, plaintiffs could fall within the category of entities subject to the Surveillance Program. Nevertheless, because the government has not officially confirmed or denied whether plaintiffs were subject to surveillance, even if plaintiffs know they were, this information remains secret. Furthermore, while plaintiffs know the contents of the Sealed Document, it too remains secret. As I explain in section III, the government did not waive its state secrets privilege by its inadvertent disclosure of the document.

As for the first category of information, because plaintiffs concede that the al Qaeda threat is irrelevant to their case, and because I decline to consider at this time whether that information is necessary for the government to defend itself (see section II.B.), I decline to determine at this point whether the information is secret.

In summary, as a result of official statements and publications, general information about the Surveillance Program is not a secret. Additionally, while it is not a secret to plaintiffs whether their communications have been intercepted as may be disclosed in the Sealed Document, the government has made no official statement confirming or denying this information and

it remains a secret. Finally, I have made no findings about whether specific information about the al Qaeda threat is a secret.

D. *Whether Disclosing the Information Would Cause Harm to the National Security*

[4] Despite the fact that it is not a secret to plaintiffs whether their communications have been intercepted, the government has not confirmed or denied whether plaintiffs have been subject to surveillance, and it claims that to do so would be to disclose matters which should not be divulged due to national security concerns. The government gives several reasons for its conclusion.

The government argues that confirmation or denial of its surveillance of a particular individual might lead that individual to change his pattern of behavior, jeopardizing the ability to collect intelligence information. Negroponte Unclassified Decl. ¶ 13. This rationale does not apply to the Sealed Document; the government already inadvertently disclosed the Sealed Document to plaintiffs, thus alerting the individuals or organizations mentioned in the document that their communications have been intercepted in the past. Even if plaintiffs are not identified in the document, if they engaged in electronic communications during the period of time described in the document, and discussed the subjects identified in the document, they also know whether their communications have been intercepted. Those individuals can be presumed to have already changed their behavior as a result of any information they learned from reading the Sealed Document.

3. I make this conclusion based on plaintiff's allegations and not based on the contents of

the Sealed Document.

In addition, the government argues that the NSA cannot publicly confirm or deny whether any individual is subject to surveillance because to do so would tend to reveal information, sources and methods. Again, at least as to the information contained in the Sealed Document, this rationale is irrelevant. Any information, sources or methods disclosed in the Sealed Document has also been revealed to plaintiffs. In addition, plaintiffs claim that this information is irrelevant to their case and will not need to be disclosed to the public, thereby avoiding further disclosure of any state secrets.

Finally, the government contends that even confirming or denying whether an individual has *not* been subject to surveillance would be harmful to national security. "If the NSA denied allegations about intelligence targets in cases where such allegations were false, but remained silent in cases where the allegations were accurate, it would tend to reveal that the individuals in the latter cases were targets." Alexander Unclassified Decl. ¶ 9. This is a valid point, but plaintiffs already know whether their communications have been intercepted, and can argue *in camera*,⁴ based on what they believe the Sealed Document reveals, that they were targets. If the Sealed Document does not reflect that plaintiffs were targets, confirming this point says nothing about plaintiffs' target-status generally.

As I have explained, in these particular circumstances, where plaintiffs know whether their communications have been intercepted, no harm to the national security would occur if plaintiffs are able to prove the general point that they were subject to surveillance as revealed in the Sealed Document, without publicly disclosing any other information contained in the Sealed Document.

However, plaintiffs do not know whether or not their communications were intercepted beyond any that may be identified in the Sealed Document, and they do not know whether their communications continue to be intercepted. The government's rationale for wanting to maintain the secrecy of other surveillance events rings true where plaintiffs do not know whether or not their communications have been intercepted. I am convinced that, based on the record as it stands now, forcing the government to confirm or deny whether plaintiffs' communications have been or continue to be intercepted, other than any communications contained in the Sealed Document, would create a reasonable danger that national security would be harmed by the disclosure of state secrets. More details about when, and whose, communications were intercepted, would allow greater insight into the methods used in the Surveillance Program, which might jeopardize the success of the Program if it is legal.

Based on the above, I have determined there is no reasonable danger that the national security would be harmed if it is confirmed or denied that plaintiffs were subject to surveillance, but only as to the surveillance event or events disclosed in the Sealed Document, and without publicly disclosing any other information in the Sealed Document. I have also concluded that disclosing whether plaintiffs were subject to any other surveillance efforts could harm the national security.

II. *Government's Motion to Dismiss or in the Alternative for Summary Judgment*

A. *Whether State Secrets are the "Very Subject Matter of the Action"*

[5] The government argues that the Surveillance Program is the very subject

4. I explain the use of *in camera* affidavits in

Section III below.

matter of plaintiffs' action because, it argues, plaintiffs' goal in the litigation is to determine whether the NSA has undertaken warrantless surveillance of them and, if so, whether that action was lawful. The government asserts that litigating these matters will necessarily require and risk the disclosure of state secrets. The government principally relies on *Fitzgerald*, 776 F.2d 1236, *Kasza*, 133 F.3d 1159, and *El-Masri*, 437 F.Supp.2d 530.

Plaintiffs respond that the President and other Executive Branch officials have acknowledged the existence of the Surveillance Program, and that the inadvertent production of the Sealed Document makes the program no longer a secret as applied to plaintiffs.

In *Fitzgerald*, plaintiff claimed published statements about his purported sale of top secret marine mammal weapons systems to other countries was libelous. The court held, "Due to the nature of the question presented in this action and the proof required by the parties to establish or refute the claim, the very subject of this litigation is itself a state secret." *Fitzgerald*, 776 F.2d at 1243. Nevertheless, it was only after the court determined that "there was simply no way this particular case could be tried without compromising sensitive military secrets," that the case was dismissed. *Id.* The court warned that "[o]nly when no amount of effort and care on the part of the court and the parties will safeguard privileged material is dismissal warranted." *Id.* at 1244.

In *Kasza*, former employees at a classified United States Air Force facility claimed violations of the Resource Conservation and Recovery Act ("RCRA"). The Secretary of the Air Force declared that the privilege was necessary to protect ten categories of classified information, including scientific and technological matters, physical characteristics, and environmental data. As a result, plaintiffs could not es-

tablish their *prima facie* case and, additionally, "any further proceeding in this matter would jeopardize national security." *Kasza*, 133 F.3d at 1170.

Finally, *El-Masri* involved claims arising from plaintiff's alleged detention pursuant to the Central Intelligence Agency's "extraordinary rendition" program. Despite the fact that the government had confirmed the existence of a rendition program, it had offered no details about "the means and methods employed in these renditions, or the persons, companies or governments involved"—facts put directly at issue by plaintiff's case. *El-Masri*, 437 F.Supp.2d at 537. As a result, "the whole object of the suit and of the discovery is to establish a fact that is a state secret." *Id.* at 539.

In contrast to these cases, the purpose of plaintiffs' suit is not to "establish a fact that is a state secret." *See id.* The government has lifted the veil of secrecy on the existence of the Surveillance Program and plaintiffs only seek to establish whether interception of their communications—an interception they purport to know about—was unlawful. As I explained above, if plaintiffs are able to prove what they allege—that the Sealed Document demonstrates they were under surveillance—no state secrets that would harm national security would be disclosed. Accordingly, while this Court may eventually terminate some or all of plaintiffs' claims, this case should not be dismissed outright because the very subject matter of the case is not a state secret.

B. *Whether Plaintiffs are Unable to Demonstrate Standing or to State a Prima Facie Case, or the Government is Unable to Defend Without Privileged Information*

The government argues that because of the state secrets at issue in this case,

plaintiffs must be denied access to the Sealed Document or any further discovery, and, as a result, plaintiffs cannot prove standing or make out a *prima facie* case on their claims. The government, relying on the “mosaic” theory described in *Halkin*, asserts that *any* disclosure of *any* information related to the Surveillance Program or the Sealed Document would tend to allow enemies to discern, and therefore avoid, the means by which surveillance takes place under the program. *see* 598 F.2d at 8. Accordingly, the government argues, plaintiffs’ claims must be dismissed.

The government also points to the *Halkin* case for the principle that a number of inferences flow from the confirmation or denial of a particular individual’s international communications, including that the individual would know what circuits were used and that foreign organizations who communicated with the targeted individuals would know what circuits were monitored and what methods of acquisition were employed. The government contends that *Halkin* recognized the need to protect against disclosure of information that would confirm or deny alleged surveillance, in part because it might tend to reveal other sensitive, classified information.

Plaintiffs dismiss this argument, scoffing at the mosaic theory in the context of this case where the government has already disclosed information that would trigger the *Halkin* concerns to the surveilled parties, albeit inadvertently. Plaintiffs also argue that the government’s justification for the assertion of privilege based on possible disclosure of the nature and severity of the al Qaeda threat and the means and methods of surveillance are inapplicable to this case. They argue that no secret information regarding these issues will need to be addressed in this case, and that the merits issues are purely legal:

whether there was an intentional violation of FISA, and whether the 2001 Authorization for Use of Military Force or the President’s constitutional power trump FISA. Plaintiffs point out that the government presented these legal arguments already in a January 2006 white paper explaining its legal theories in support of the Surveillance Program, without revealing state secrets.

I decline to decide at this time whether this case should be dismissed on the ground that the government’s state secrets assertion will preclude evidence necessary for plaintiffs to establish standing or make a *prima facie* case, or for the government to assert a defense. I recognize that disclosing information regarding the al Qaeda threat or disclosing non-public details of the Surveillance Program may harm national security, but I am not yet convinced that this information is relevant to the case and will need to be revealed.

In addition, based on my ruling that plaintiffs know from the Sealed Document whether their communications were intercepted, plaintiffs should have an opportunity to establish standing and make a *prima facie* case, even if they must do so *in camera*. Since plaintiffs already know a few pieces of the mosaic, I am unable to accept the theory that the release of *any* facts related to the Surveillance Program as applied to these plaintiffs will jeopardize national security. Contrary to *Halkin*, in which the plaintiffs only had proof that their names *may* have been on a watchlist and as a result their communications *may* have been acquired, plaintiffs here purport to have evidence that their communications were intercepted. *See* 598 F.2d at 10–11. Indeed, even the government concedes that “Plaintiffs remain free to make any allegations and assert any arguments in support of their standing, or any other argument, as they deem appropriate, and

the Court has the power to review the sealed classified document in order to assess Plaintiffs' claims and arguments." Reply in Supp. of Defs.' Mot. to Prevent Pls.' Access to the Sealed Classified Document at 19.

Nevertheless, I may conclude, after exploring the procedures described in section VII below, that there is no way plaintiffs can prove their case without compromising state secrets, or no possibility that the government can properly defend the allegations.⁵ I recognize that the government believes any further proceedings in this case would be futile, but I am just not prepared to dismiss this case without first examining all available options and allowing plaintiffs their constitutional right to seek relief in this Court. See *Spock v. United States*, 464 F.Supp. 510, 519 (S.D.N.Y.1978) ("[a]n aggrieved party should not lightly be deprived of the constitutional right to petition the courts for relief").

C. *Dismissal Based on Statutory Privileges*

The government argues that two statutory privileges also protect the intelligence-related information, sources and methods in this case, requiring the dismissal of the action. It claims that Section 6 of the National Security Act, 50 U.S.C. § 402 prohibits disclosure of any information in this case. That section provides that "nothing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any

information with respect to the activities thereof. . . ." 50 U.S.C. § 402. The government makes the same claim for Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1), which requires the Director of National Intelligence to protect intelligence sources and methods from unauthorized disclosure.

Plaintiffs argue that neither statutory privilege applies because they are co-extensive with the state secrets privilege, and because plaintiffs' claims can be litigated on the merits without any need to know defendants' secret sources and methods. Plaintiffs point out that none of the cases cited by the government involved the dismissal of a case based on the assertion of one of the statutory privileges.

The statutory privileges at issue here do not direct the dismissal of this action, nor am I yet convinced that they will block evidence necessary to plaintiffs' case. Plaintiffs should have an opportunity to attempt to show standing and a *prima facie* case based on what is currently available to them and any evidence that I have determined is not covered by the state secrets privilege. In proceeding with the discovery process, the government is free to identify discovery requests that fall within these other statutory privileges, and explain specifically why this is so, and I will determine whether the privileges prevent plaintiffs from discovering that specific evidence.

Based on the analysis above, I deny the government's motion to dismiss. I also

5. I note, for example, the fact that the government has claimed the state secrets privilege, in addition to statutory privileges, in answer to plaintiffs' interrogatory requesting information about whether a warrant was obtained. Plaintiffs indicated in oral argument that they would rely on public statements and statements in the Sealed Document to prove the surveillance was warrantless. If after holding

the discovery conference discussed in section V, I uphold the government's invocation of the privilege, plaintiffs will have to proceed based on what is publicly disclosed and what they are able to argue *in camera* that the Sealed Document discloses. Simply put, plaintiffs should have an opportunity to make that argument.

deny the government's motion for summary judgment in order to allow plaintiffs to conduct discovery, but I give the government leave to renew its motion.

III. *Defendants' Motion to Deny Plaintiffs' Access to Sealed Document*

[6] The government argues in its Motion to Prevent Plaintiffs Access to the Sealed Document that the document remains classified, regardless of the inadvertent and unauthorized disclosure. *See* Exec. Order No. 12,958, § 1.1(b), *as amended by* Exec. Order No. 13,292 ("Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information."). According to the government, the Executive has sole power to protect classified information. The decision to authorize or deny a security clearance lies exclusively with the Executive, and a district court cannot assess the merits of such a decision. *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir.1990). The government further argues that plaintiffs cannot be allowed access to the Sealed Document because such access would carry with it an unacceptable risk of unauthorized disclosure. The government also invokes the state secrets privilege over the document. Finally, the government requests that I order plaintiffs to return to the government all copies of the Sealed Document.

Plaintiffs respond that, under the doctrine of separation of powers, the court has inherent authority to allow access to documents under its control, as the Sealed Document now is. Plaintiffs also argue that if the court rules that they may have access to the Sealed Document, such a decision is subject to judicial immunity. Furthermore, plaintiffs assert that the court has the authority to ensure that the decision to classify a document was not made for the purpose of concealing unlawful conduct, citing cases in which courts

have conducted *de novo* review of the classified status of documents.

Plaintiffs correctly point out that the Supreme Court has recognized that district courts have "the latitude to control any discovery process which may be instituted so as to balance respondent's need for access to proof which would support a colorable constitutional claim against the extraordinary needs of the CIA for confidentiality and the protection of its methods, sources, and mission." *Webster v. Doe*, 486 U.S. 592, 604, 108 S.Ct. 2047, 100 L.Ed.2d 632 (1988). Plaintiffs then contend that because defense counsel have access to the Sealed Document, due process requires that plaintiffs' counsel have access as well.

I accept the government's argument that the inadvertent disclosure of the Sealed Document does not declassify it or waive the state secrets privilege. In addition, I am unwilling to use any "inherent authority" of the Court to give plaintiffs access to the document, and I decline at this time to accept plaintiffs' invitation to overrule any classification decision made by the government as to the entire document. The cases plaintiffs rely on in support of their demand that I review *de novo* the reasons for the classification of the Sealed Document caution that courts are to proceed very carefully in reviewing classification decisions and should not "second-guess" classification decisions when the "judiciary lacks the requisite expertise." *See McGehee v. Casey*, 718 F.2d 1137, 1149 (D.C.Cir.1983); *American Library Ass'n v. Faurer*, 631 F.Supp. 416, 423 (D.D.C. 1986) (citing *McGehee*); *ACLU v. Dep't of Defense*, 389 F.Supp.2d 547, 564 (S.D.N.Y. 2005) (within CIA's ken to evaluate the risks of disclosure to intelligence-gathering); *Salisbury v. United States*, 690 F.2d 966, 970 (D.C.Cir.1982) ("accord substantial weight" to classification decision).

The Executive has not granted authority to plaintiffs to review classified materials, and the document remains classified. In addition, if plaintiffs were given full access to the document, plaintiffs may refer back to it and reflect on what it does or does not disclose. For example, they may confirm which modes of communication were vulnerable to interception and avoid those modes. The government has raised sufficient grounds for concern and I grant the government's motion.

At the same time, since the government expressly concedes that "the Court has the power to review the sealed classified document in order to assess Plaintiffs' claims and arguments," I will permit plaintiffs to file *in camera* any affidavits attesting to the contents of the document from their memories to support their standing in this case and to make a *prima facie* case. See Reply in Supp. of Defs.' Mot. to Prevent Pls.' Access to the Sealed Classified Document at 19. The government may request that these declarations be deposited in the SCIF.

In addition, I urge the government to consider again whether redactions to the document may be undertaken given my ruling that it is no longer a secret to plaintiffs as to what information the Sealed Document contains. For example, perhaps some of the information in the Sealed Document should be shared with plaintiffs, subject to a protective order, as it is now innocuous, such as the fact of this particular surveillance event, and any dates contained in the document. If it is possible to disentangle those details from whatever else the Sealed Document may reveal about the Surveillance Program more generally, and if this information is necessary to plaintiffs' case, I may want to attempt such an exercise.

Therefore, I grant the government's Motion to Deny Plaintiffs' Access to the Sealed Document in that plaintiffs may not have physical control over the entire document. Plaintiffs may, however, submit affidavits *in camera* to support their standing and to make a *prima facie* case. After exploring possible redactions, I may require that plaintiffs be provided with information that is now no longer "secret," subject to a protective order.

Finally, pursuant to the government's request, I order plaintiffs to deliver to my chambers all copies of the Sealed Document in their possession or under their control.⁶ I will contact the government upon receipt of any copies, at which time the government may collect the copies and deposit them in the SCIF.

IV. Whether FISA Preempts the State Secrets Privilege

Plaintiffs argue in their opposition both to the government's motion to dismiss and the motion to deny access to the Sealed Document that FISA preempts the state secrets privilege. Specifically, plaintiffs argue that FISA vests the courts with control over materials relating to electronic surveillance, subject to "appropriate security procedures and protective orders." 50 U.S.C. § 1806(f). As a result, plaintiffs contend that Section 1806(f) renders the state secrets privilege superfluous in FISA litigation.

The government responds that Section 1806(f) is inapplicable to this case, because the provision was enacted for the benefit of the government. The government argues that Section 1806(f) authorizes district courts, at the request of the government, to review *in camera* and protect classified information when the government intends to use evidence

6. I note that both Belew and Ghafoor have testified via declaration that they complied

fully with the FBI's request to destroy or return all copies of the Sealed Document.

against an individual. Indeed, the government contends, the statute and the case law demonstrate that the “aggrieved person” language is “someone as to whom FISA surveillance has been made known, typically in a criminal proceeding.” Defs.’ Reply in Supp. of Mot. to Dismiss/Summ. J. at 18. In this case, it argues, where the threshold question of whether or not plaintiffs have been subject to surveillance is itself a state secret, plaintiffs cannot use FISA to confirm their belief. In addition, the government argues, there is no clear congressional statement to overturn the privilege.

[7] The relevant inquiry in deciding whether a statute preempts a federal common law privilege⁷ is whether the statute speaks directly to the question otherwise answered by federal common law. *Kasza*, 133 F.3d at 1167. There is a presumption in favor of the privilege “except when a statutory purpose to the contrary is evident.” *Id.*

The language of § 1806(f) is broad, providing, in relevant part:

Whenever a court . . . is notified pursuant to subsection (c) or (d) of this section [describing occasions when the government intends to use information obtained through surveillance], or whenever a motion is made pursuant to subsection (e) [motion to suppress], or **whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States . . . to discover or obtain applications or orders or other materials relating to electronic surveillance** or to discover, obtain, or suppress evidence or information obtained

or derived from electronic surveillance under this chapter, the United States district court . . . shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would **harm the national security of the United States**, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted.

50 U.S.C. § 1806(f) (emphasis added). The provision goes on to state that:

In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

Id.

“Aggrieved person” is defined by the statute to mean, “a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.” 50 U.S.C. § 1801(k). Finally, under Section 1810, “An aggrieved person, other than a foreign power or an agent of a foreign power, . . . who has been subjected to an electronic surveillance . . . in violation of section 1809 [engages in electronic surveillance except as authorized by statute] shall have a cause of action against any person who committed such violation” 50 U.S.C. § 1810.

7. The government argues that the state secrets privilege is also *constitutionally*-based, deriving from the President’s “most basic constitutional duty” to protect the Nation from armed attack, and suggests a different method of evaluating whether FISA preempts

the state secrets privilege. Specifically, according to the government, Congress must set forth a “clear statement” that it intended to intrude on powers of the Executive. *United States v. Bass*, 404 U.S. 336, 350, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971).

To summarize, Section 1810 gives a private right of action to an “aggrieved person,” so long as the person is not a foreign power or an agent of a foreign power. An “aggrieved person” is someone whose communications have been subject to surveillance. Pursuant to Section 1806(f), a plaintiff, if he is able to show he is an “aggrieved person,” may seek “to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter [FISA].” Upon an affidavit from the Attorney General that “disclosure or an adversary hearing would harm the national security of the United States,” the court may review *in camera* and *ex parte* “the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted.” To accept the government’s argument that Section 1806(f) is only applicable when the government intends to use information against a party would nullify FISA’s private remedy and would be contrary to the plain language of Section 1806(f).

The question then becomes whether Section 1806(f) preempts the state secrets privilege. I decline to reach this very difficult question at this time, which involves whether Congress preempted what the government asserts is a constitutionally-based privilege. Given that the government has already permitted the court to review the Sealed Document *in camera* and has expressly conceded that I may evaluate plaintiffs’ claims based on my review of that document, I need not resolve this question presently.

V. Plaintiffs’ Motion for Order Compelling Discovery

Plaintiffs’ Motion for Order Compelling Discovery seeks responses from the gov-

ernment to interrogatories. The interrogatories request answers to whether electronic surveillance was conducted of Al-Haramain or its director and counsel, dates of such surveillance, and whether the FISA court issued warrants for such surveillance. The interrogatories also seek information about the classification of the Sealed Document, including what date the decision to classify it as SCI was made, what officials made that decision, and the reason for that classification.

The government makes substantially the same arguments in support of its opposition to plaintiffs’ motion to compel discovery as it does in its memorandum in support of its motion to dismiss. It argues that it has not acknowledged the specific surveillance alleged in this case, even if it has acknowledged the Surveillance Program more generally, and that it cannot respond to the interrogatories because all possible answers would be subject to the state secrets privilege.

Given my rulings that it is no longer secret to plaintiffs whether their communications were intercepted as described in the Sealed Document, and that there would be no harm to national security if plaintiffs’ general allegations were confirmed or denied as to that specific circumstance, I will hold a discovery conference to determine to which interrogatories plaintiffs need answers, and to which interrogatories the government should be required to respond. I may require the government to provide specific responses to the interrogatories for *in camera*, *ex parte* review on an item-by-item basis as was generally approved by *In re United States*. See 872 F.2d at 478. Nevertheless, I will ensure that further steps in the discovery process are taken with the Supreme Court’s caution in mind; the claim

of privilege is accorded the “utmost deference,” unless a court is not satisfied under the particular circumstances of the case that “there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged.” *Reynolds*, 345 U.S. at 10, 73 S.Ct. 528.

As a result, I deny Plaintiffs’ Motion for Order Compelling Discovery, with leave to renew after the discovery conference.

VI. *Oregonian’s Motion to Unseal Records*

[8] The Oregonian argues in its motion to unseal records that there is a strong presumption supporting access to court records, and that a court must state the compelling interest requiring an order to seal, “along with findings specific enough so that a reviewing court can determine whether the closure order was properly entered.” *Oregonian Publishing Co. v. United States Dist. Ct. for the Dist. of Or.*, 920 F.2d 1462, 1464 (9th Cir.1990). The Oregonian suggests that even if the Sealed Document is classified, sealing of the document may be inappropriate if it is possible to redact only the few lines that require confidential treatment. *United States v. Ressam*, 221 F.Supp.2d 1252, 1263–64 (W.D.Wash.2002). The newspaper argues that the Sealed Document should be unsealed because no compelling interest supports further sealing and, in any event, any interest is outweighed by the constitutional and common law rights of public access to court documents.

The government responds that the document was and remains classified as SCI and “TOP SECRET,” notwithstanding its inadvertent disclosure to the plaintiffs, and that the Executive has sole authority to

classify or declassify information.⁸ The government further asserts that before the court evaluates whether a compelling interest requires continued protection of a document, the court must first address whether the place and process have historically been open to the press and general public and whether public access plays a significant positive role in the functioning of the particular process in question. *Phoenix Newspapers, Inc. v. United States Dist. Ct. for the Dist. of Arizona*, 156 F.3d 940, 946 (9th Cir.1998). Here, according to the government, the Sealed Document remains a classified document of the sort to which the press or public have historically not had access.

Given my decision above that the inadvertent disclosure of the Sealed Document does not declassify it or waive application of the state secrets privilege, I must deny the Oregonian’s Motion to Unseal Records. Even if the document were one to which the press or public have historically had access by virtue of its being filed with the Court, the government has asserted a compelling national security interest that overrides any public interest in the document. While I may entertain the possibility that plaintiff may have access to any innocuous information in the document based on the fact that it is no longer secret to them, and subject to a protective order, the document contains highly classified information that must not be disclosed to the public.

VII. *Further Proceedings*

I will schedule a discovery conference at which the parties should be prepared to discuss the following issues: possible redactions to the Sealed Document, possible stipulations, item by item review of interrogatory requests to consider whether *in*

8. On April 14, 2006, the government submitted a Classified Declaration in Opposition to Oregonian Publishing Company’s Motion to Intervene and Unseal Records, and on May

12, 2006, the government filed a Superseding Classified Declaration. I have not reviewed either of these declarations submitted *in camera* and *ex parte*.

camera responses would be appropriate, depositions, hiring an expert to assist the Court in determining whether any of these disclosures may reasonably result in harm to the national security, and any other appropriate discovery issues. The parties should confer on a few mutually convenient dates and times and contact the Court to reserve a time.

VIII. *Certification for Appeal*

Since I recognize, as did Judge Walker in *Hepting*, that my rulings on the Motion to Dismiss or, in the Alternative, for Summary Judgment and Motion to Prevent Plaintiffs' Access to the Sealed Classified Document "involve[] a controlling question of law" about which there is "substantial ground for difference of opinion," and since "an immediate appeal from the order may materially advance the ultimate termination of this litigation," I certify these rulings for immediate appeal. 28 U.S.C. § 1292(b). If the parties choose to appeal, and if the appeal is taken, the parties may move to stay proceedings in the district court.

CONCLUSION

The government's Motion to Dismiss or, in the Alternative, for Summary Judgment (# 58) is denied, but the government has leave to renew its Motion for Summary Judgment. The government's Motion to Prevent Plaintiffs' Access to the Sealed Classified Document (# 39) is granted. Plaintiffs' Motion for Order Compelling Discovery (# 35) is denied with leave to renew. Oregonian Publishing Company's Motion to Intervene was previously granted, but its Motion to Unseal Records (# 7) is denied.

IT IS SO ORDERED.



DEC 15 2006

FILED
CLERK'S OFFICE

A CERTIFIED TRUE COPY

DEC 15 2006

DOCKET NO. 1791

M 06-1791 VDW

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS
RECORDS LITIGATION**

Mink v. AT&T Communications of the Southwest, Inc., et al., E.D. Missouri,

C.A. No. 4:06-cv-01113

Shubert, et al. v. Bush, et al., E.D. New York,

C.A. No. 1:06-cv-02282

Center for Constitutional Rights, et al. v. Bush, et al., S.D. New York,

C.A. No. 1:06-cv-00313

Al-Haramain Islamic Foundation, Inc., et al. v. Bush, et al., D. Oregon,

C.A. No. 3:06-cv-00274

FILED

DEC 19 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.
FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL,
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

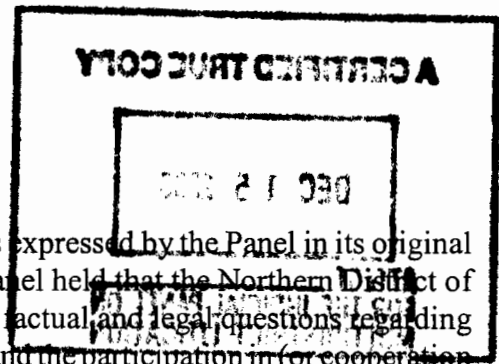
TRANSFER ORDER

Before the Panel are motions brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in these four actions to vacate the portion of a Panel order conditionally transferring the actions to the Northern District of California for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Federal Government defendants in the actions pending in the Eastern District of New York, Southern District of New York, and District of Oregon oppose the motions filed with respect to those actions, and telecommunication company defendants¹ in the Eastern District of Missouri action oppose the motion filed with respect to that action.² Plaintiffs in fourteen of the sixteen initially centralized actions have submitted a brief in support of the motions submitted by the Eastern District of New York, Southern District of New York, and District of Oregon plaintiffs.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these four actions involve common questions of fact with the actions in this litigation previously centralized in the Northern District of California, and that transfer of the four actions to the Northern District of California for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of

¹ AT&T Communications of the Southwest, Inc., Southwestern Bell Telephone, L.P., and SBC Long Distance, L.L.C.

² Plaintiff Claudia Mink's motion to strike the telecommunication company defendants' response to her motion to vacate the conditional transfer order in the Missouri action is denied.



the litigation. Transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Northern District of California was a proper Section 1407 forum for actions sharing actual and legal questions regarding alleged Government surveillance of telecommunications activity and the participation in (or cooperation with) that surveillance by individual telecommunications companies. The Panel stated that centralization under Section 1407 was necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly with respect to matters involving national security), and conserve the resources of the parties, their counsel and the judiciary. *See In re National Security Agency Telecommunications Records Litigation*, 444 F.Supp.2d 1332, 1334 (J.P.M.L. 2006). Like the actions already centralized in this docket, the four actions currently before the Panel arise from the Government's alleged telecommunications surveillance program, and necessarily implicate common and delicate questions of national security, including the applicability and scope of the state secrets privilege and related authorities.

Plaintiffs in the action pending in the District of Oregon argue that the existence of a top-secret sealed document renders their action unique, in that the document purportedly proves that plaintiffs were actually subject to surveillance, a key contested element of the other MDL-1791 actions. Even if plaintiffs' recollections of that document's contents are correct, however, the document would only show that surveillance was being conducted at some time prior to August 2004, when the document was inadvertently disclosed to plaintiffs. Plaintiffs' complaint, by contrast, raises allegations encompassing the allegedly ongoing surveillance program in its entirety, including events occurring subsequent to August 2004.

In the Southern District of New York action, plaintiffs attempt to distinguish their action on the theory that their status as civil rights attorneys for suspected terrorists will allow them to prevail in their pending summary judgment motion by attesting merely to a well-founded fear of surveillance (based on what has been publicly disclosed about the surveillance program), without having to show actual surveillance and without the need for any discovery. The pendency of that motion and the Government's competing motion to dismiss is not an impediment to transfer, inasmuch as the transferee judge can resolve them. Moreover, the contention that certain individuals or groups have legitimate and especial reasons to fear surveillance which are not shared by the average citizen is one that is likely to arise in some form in other actions centralized in this docket. Centralization avoids the possibility of inconsistent rulings on this important issue. The Panel finds the remaining arguments in opposition to transfer also unpersuasive.

As the Panel stated in its original order of transfer, the evolution of Section 1407 proceedings in the transferee district may prompt a plaintiff to contend that the continued inclusion of an action or claim in MDL-1791 is no longer advisable. At that juncture, the affected plaintiff can seek a suggestion of remand from the transferee judge. If the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these four actions are transferred to the Northern District of California and, with the consent of that court, assigned to the

Honorable Vaughn R. Walker for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

A handwritten signature in black ink, appearing to read "Wm. Terrell Hodges", written in a cursive style.

Wm. Terrell Hodges
Chairman

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 21 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

AL-HARAMAIN ISLAMIC
FOUNDATION, INC., et al.,

Plaintiffs - Respondents,

v.

GEORGE W. BUSH, President of the
Unites States; et al.,

Defendants - Petitioners.

No. 06-80134

D.C. No. CV-06-00274-KI
District of Oregon,
Portland

ORDER

Before: McKEOWN and FISHER, Circuit Judges.

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 10 days of this order, petitioners shall perfect the appeal pursuant to Federal Rule of Appellate Procedure 5(d). *See also* 9th Cir. R. 3.1(c). The Clerk is directed to open a new docket number for this appeal.

Petitioners' alternate motion to hold this appeal in abeyance pending resolution by this court of *Hepting v. AT&T Corp.*, appeal No. 06-17132, and *Hepting v. United States*, appeal No. 06-17137, shall be addressed by separate order.

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wieking
Clerk

General Court Number
415.522.2000

10 January 007

Re: MDL – 06-1791 // In re National Security Agency Telecommunications Records Litigation

Title of Case

Al Haramain Islamic Foundation, Inc., et al -v- Bush, et al

Case Number

C.A. No. 3:06-0274

Dear Sir/Madam:

This is to advise you that the above entitled case has been transferred from the District of Oregon to this Court pursuant to 28 U.S.C. §1407(c) and assigned to the Honorable Vaughn R. Walker. We have given the action the individual case number **C 07 0109 VRW**.

All future documents submitted in this case are to be presented to the Court in compliance with the enclosed Practice and Procedure Order Upon Transfer Pursuant to §1407(a) issued on 31 August 2006 in the MDL case, case no. M 06-1791 VRW.

Please be advised that this action has been designated as an E-Filing case. Therefore, counsel is directed to immediately register as an ECF user with the Northern District of California. Information on registration and an on-line registration form can be found in our website at <https://ecf.cand.uscourts.gov>

Sincerely yours,



Rufino C. Santos
Deputy Clerk

cc: Counsel
MDL



The Attorney General
Washington, D.C.

January 17, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Minority Member
Committee of the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I am writing to inform you that on January 10, 2007, a Judge of the Foreign Intelligence Surveillance Court issued orders authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. As a result of these orders, any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court.

In the spring of 2005—well before the first press account disclosing the existence of the Terrorist Surveillance Program—the Administration began exploring options for seeking such FISA Court approval. Any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the Terrorist Surveillance Program. These orders are innovative, they are complex, and it took considerable time and work for the Government to develop the approach that was proposed to the Court and for the Judge on the FISC to consider and approve these orders.

The President is committed to using all lawful tools to protect our Nation from the terrorist threat, including making maximum use of the authorities provided by FISA and taking full advantage of developments in the law. Although, as we have previously explained, the Terrorist Surveillance Program fully complies with the law, the orders the Government has obtained will allow the necessary speed and agility while providing substantial advantages. Accordingly, under these circumstances, the President has

Letter to Chairman Leahy and Senator Specter
January 17, 2007
Page 2

determined not to reauthorize the Terrorist Surveillance Program when the current authorization expires.

The Intelligence Committees have been briefed on the highly classified details of these orders. In addition, I have directed Steve Bradbury, Acting Assistant Attorney General for the Office of Legal Counsel, and Ken Wainstein, Assistant Attorney General for National Security, to provide a classified briefing to you on the details of these orders.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Gonzales", written in a cursive style.

Alberto R. Gonzales
Attorney General

cc: The Honorable John D. Rockefeller, IV
The Honorable Christopher Bond
The Honorable Sylvester Reyes
The Honorable Peter Hoekstra
The Honorable John Conyers, Jr.
The Honorable Lamar S. Smith

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National Security Agency, President George W. Bush)*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

)	No. M:06-cv-01791-VRW
IN RE NATIONAL SECURITY AGENCY)	
TELECOMMUNICATIONS RECORDS)	NOTICE OF FILING BY THE UNITED
LITIGATION)	STATES OF PUBLIC DECLARATION
)	OF LT. GEN. KEITH B. ALEXANDER
<u>This Document Relates To:</u>)	
)	Hon. Vaughn R. Walker
ALL ACTIONS)	
)	
)	

Notice of Filing Public Declaration of Lt. Gen. Keith B. Alexander
MDL No. 06-1791-VRW

**NOTICE OF FILING BY THE UNITED STATES OF PUBLIC DECLARATION OF
LT. GEN. KEITH B. ALEXANDER**

The United States hereby provides notice of the filing of the attached unclassified Declaration of Lieutenant General Keith B. Alexander, Director, National Security Agency, dated January 24, 2007 (Exhibit 1). As indicated by counsel for the United States at the February 9, 2007 hearing, this declaration was filed by the United States with the United States Court of Appeals for the Sixth Circuit in *ACLU v. NSA*, Nos. 06-2095, 06-2140, and is submitted in this proceeding to provide further public information regarding the orders of the Foreign Intelligence Surveillance Court issued on January 10, 2007, beyond the information provided in the notice filed by the United States on January 17, 2007. *See* Docket No. 127 (Notice by the United States of Attorney General's Letter to Congress). Also attached is an additional paragraph that was originally included in the classified version of the declaration filed in Sixth Circuit proceedings and was subsequently released as unclassified (Exhibit 2).

Dated: February 22, 2007

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General, Civil Division

CARL J. NICHOLS
Deputy Assistant Attorney General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

JOSEPH H. HUNT
Director, Federal Programs Branch

s/ Anthony J. Coppolino
ANTHONY J. COPPOLINO
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s/ Andrew H. Tannenbaum
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Notice of Filing Public Declaration of Lt. Gen. Keith B. Alexander
MDL No. 06-1791-VRW

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*Attorneys for Federal Defendants in their Official
Capacities and Federal Intervenor-Defendants (United
States of America, National Security Agency, President
George W. Bush)*

EXHIBIT 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION,
ET AL.,

Plaintiffs - Appellees/Cross-Appellants,

v.

NATIONAL SECURITY AGENCY, ET AL.,

Defendants - Appellants/Cross-Appellees.

)
)
)
)
)
) Nos. 06-2095, 06-2140
)
)
)
)
)

**DECLARATION OF LIEUTENANT GENERAL KEITH B.
ALEXANDER, DIRECTOR, NATIONAL SECURITY AGENCY**

(U) I, Lieutenant General Keith B. Alexander, do hereby state and
declare as follows:

(U) Introduction and Summary

1. (U) I am the Director of the National Security Agency
("NSA"), an intelligence agency within the Department of Defense. I am
responsible for directing the NSA, overseeing the operations undertaken to
carry out its mission and, by specific charge of the President and the
Director of National Intelligence, protecting NSA activities and intelligence
sources and methods. I have been designated an original TOP SECRET
classification authority under Executive Order No. 12958, 60 Fed. Reg.

19825 (1995), as amended on March 25, 2003, and Department of Defense Directive No. 5200.1-R, Information Security Program Regulation, 32 C.F.R. § 159a.12 (2000).

2. (U) The purpose of this declaration is to provide some background about the new orders that the Foreign Intelligence Surveillance Court (“FISA Court”) issued on January 10, 2007. I have also executed a separate classified declaration dated January 24, 2007, and lodged *in camera* and *ex parte* in this case. Text from the classified version of this declaration has been altered or redacted in this unclassified version, and the paragraphs in this version have been renumbered.

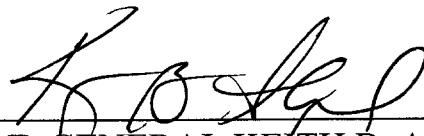
3. (U) The NSA and Department of Justice have been working together for some time to seek FISA Court approval for the electronic surveillance of international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. In particular, any court authorization not only would have to satisfy the statutory requirements for an order under the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C. § 1801 *et seq.*, but also would have to preserve the speed and agility that the NSA needs to help protect the Nation from another terrorist attack by al Qaeda—the very speed and agility that

was offered by the Terrorist Surveillance Program ("TSP"). The new FISA Court orders are innovative and complex and it took considerable time and work for the Government to develop the approach that was proposed to and ultimately accepted by the Court. As a result of the new orders, any electronic surveillance that was conducted as part of the TSP is now being conducted subject to the approval of the FISA Court.

4. (U) On January 17, 2007, the Attorney General made public the general facts that new FISA Court orders had been issued; that the orders authorized the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization; that, as a result of these orders, any electronic surveillance that was occurring as part of the TSP will now be conducted subject to the approval of the FISA Court; and that under these circumstances, the President has determined not to reauthorize the TSP. The contents of the new orders, however, remain highly classified.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 24 Jan 07



LT. GENERAL KEITH B. ALEXANDER
Director, National Security Agency

EXHIBIT 2

[U] Accordingly, for some time and since before either the public disclosure of the TSP or the filing of this litigation, the Government has been engaged in the process of exploring whether an alternative approach for FISA Court approval that would ameliorate the drawbacks of the traditional FISA procedures could be authorized to cover surveillance activities similar to those conducted under the TSP. On January 10, 2007, as a culmination of that lengthy process, the FISA Court issued new classified orders. While the general existence of the new FISA Court orders, as publicly described by the Attorney General, is not classified, the number, nature, and contents of the specific orders described herein are highly classified.

FILED

APR 26 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AL-HARAMAIN ISLAMIC
FOUNDATION, INC., an Oregon
Nonprofit Corporation; et al.,

Plaintiffs - Appellees,

v.

GEORGE W. BUSH, President of the
United States; et al.,

Defendants - Appellants.

No. 06-36083

MDL No. CV-06-1791-VRW
D.C. No. CV-07-00109-VRW
Northern District of California,
San Francisco

TASH HEPTING, on Behalf of
Themselves and All Others Similarly
Situating; et al.,

Plaintiffs - Appellees,

and

WIRED NEWS; et al.,

Intervenors,

v.

AT&T CORPORATION,

Defendant - Appellant,

and

No. 06-17132, 06-17137

D.C. No. CV-06-00672-VRW
Northern District of California,
San Francisco

ORDER

AT&T, INC.,

Defendant,

and

UNITED STATES OF AMERICA,

Defendant - Intervenor -
Appellant.

Before: O'SCANNLAIN, GRABER and BEA, Circuit Judges.

The court has reviewed the motion for reconsideration and responses thereto, including the opposition to consolidation filed by the non-party plaintiffs-appellees in *Hepting v. AT&T*, appeal Nos. 06-17132, 06-17137. The motion for reconsideration seeking to lift the stay of appellate proceedings is granted.

Appellants' April 20, 2007 motion for leave to file an opposition to appellees' proposed briefing scheduled in appeal No. 06-36083 is granted. Appellants' opposition has been filed.

The Clerk shall consolidate and calendar this appeal with the appeals *Hepting v. AT&T Corp.*, appeal No. 06-17132, and *Hepting v. United States*, appeal No. 06-17137. The briefing schedule in appeal Nos. 06-17132 and 06-17137 remains as previously established.

06-17132, 06-17137, 06-36083

The following briefing schedule shall be set for appeal No. 06-36083: the opening brief and excerpts of record are due June 6, 2007; the answering brief is due July 6, 2007; and the optional reply brief is due within 14 days after service of the answering brief.

The provisions of Ninth Circuit Rule 31-2.2(a) shall not be applicable to appeal No. 06-36083; any Rule 31-2.2(b) request is strongly disfavored.

The Clerk shall calendar these consolidated appeals during the week of August 13-17, 2007, in San Francisco, California.

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

**U.S. District Court
District of Oregon (Portland)
CIVIL DOCKET FOR CASE #: 3:06-cv-00274-KI**

Al-Haramain Islamic Foundation, Inc. et al v. Bush et al
Assigned to: Judge Garr M. King
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 02/28/2006
Date Terminated: 12/20/2006
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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V.

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Date Filed	#	Docket Text
02/28/2006	<u>1</u>	Complaint.Filed by Asim Ghafoor, Al-Haramain Islamic Foundation, Inc., Wendell Belew against George W Bush, National Security Agency, Keith B. Alexander, Federal Bureau of Investigation, Robert S. Mueller, III.(cib,) (Entered: 02/28/2006)
02/28/2006	<u>2</u>	Motion and Memorandum In Support To File Material Under Seal and Request For In-Camera Inspection. Filed by all plaintiffs. (cib,) Additional attachment(s)

		added on 3/2/2006 (cib,) (Entered: 02/28/2006)
02/28/2006	3	Discovery and Pretrial Scheduling Order and Notice of Case Assignment to the Honorable Michael W. Mosman. Discovery is to be completed by 6/28/2006. Joint Alternate Dispute Resolution Report is due by 7/28/2006. Pretrial Order is due by 7/28/2006. (cib,) (Entered: 02/28/2006)
03/01/2006	4	Corporate Disclosure Statement. Filed by all plaintiffs. (cib,) (Entered: 03/02/2006)
03/07/2006	5	Notice of Case Reassignment: This case has been reassigned from Judge Michael W. Mosman to Judge Garr M. King. (cib,) (Entered: 03/09/2006)
03/17/2006	6	Record of ORDER setting a telephone status hearing for Monday, March 20,2006 at 11:00AM (PST) before Judge Garr M. King. The court will place the telephone call. (A Copy of this minute order was faxed to Anthony Coppolino on 3/17/06 at 5:05pm) Ordered by Judge Garr M. King. (md,) (Entered: 03/17/2006)
03/17/2006	7	Motion to Intervene; Motion to Unseal Records. Filed by Oregon Publishing Company. (pvh,) (Entered: 03/20/2006)
03/17/2006	8	Memorandum in Support. Filed by Oregon Publishing Company. (Related document(s): Motion to intervene, Motion to Unseal Records 7 .) (pvh,) (Entered: 03/20/2006)
03/20/2006	9	MINUTES of Telephone Conference: Order - Granting Plaintiffs' Motion and Memorandum In Support To File Material Under Seal and Request For In-Camera Inspection 2 . Steven Goldberg, J. Ashlee Albise, Zaha Hassan and Thomas Nelson present as counsel for plaintiff(s). Barry Sheldahl, Jim Sutherlin, Andrew Tannenbaum and Anthony Coppolino present as counsel for defendant (s). Court Reporter: Dennis Grube. Garr M. King presiding(mja,) (Entered: 03/20/2006)
03/21/2006	10	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference for 3/21/2006 at 11:15AM. The court will initiate the call to the parties. (A Copy of this minute order was faxed to Anthony Coppolino and Andrew Tannenbaum on 3/21/06) Ordered by Judge Garr M. King.) (Entered: 03/21/2006)
03/21/2006	11	MINUTES of Telephone Conference: Order - Sealed document discussed with counsel as stated on the record. Steve Goldberg and J. Ashlee Albise present as counsel for plaintiff(s). Anthony Coppolino, Andrew Tannenbaum, Barry Schendahl, James Sutherlin and Steve Borgen present as counsel for defendant (s). Court Reporter: Bonita Alexander. Garr M. King presiding. (mja,) (Entered: 03/21/2006)
03/21/2006	12	Notice of Appearance by attorney Jessica Ashlee Albies. Filed by Jessica Ashlee Albies appearing on behalf of all plaintiffs.(Albies, Jessica) (Entered: 03/21/2006)
03/21/2006	16	Return of Service executed upon United States Attorney General on 03/08/06 by certified mail. (pvh,) (Entered: 03/22/2006)
03/22/2006	13	Notice of Appearance by attorney Anthony J. Coppolino , <i>United States Department of Justice</i> . Filed by Anthony J. Coppolino appearing on behalf of all defendants.(Coppolino, Anthony) (Entered: 03/22/2006)

03/22/2006	14	Notice of Appearance by attorney Andrew H. Tannenbaum , <i>United States Department of Justice</i> . Filed by Andrew H. Tannenbaum appearing on behalf of all defendants.(Tannenbaum, Andrew) (Entered: 03/22/2006)
03/22/2006	15	Notice of Appearance by attorney Andrea Marie Gacki , <i>United States Department of Justice</i> . Filed by Andrea Marie Gacki appearing on behalf of all defendants.(Gacki, Andrea) (Entered: 03/22/2006)
03/29/2006	17	Unopposed Motion for Extension of Time to File a Response/Reply to <i>Motion to Unseal Records and to Motion to intervene</i> , 7 . Filed by all defendants. (Gacki, Andrea) (Entered: 03/29/2006)
04/04/2006	18	ORDER - Granting Defendants' Unopposed Motion for Extension of Time to File a Response to Motion to Unseal Records and to Motion to intervene 17 up to and including 4/14/2006. Ordered by Judge Garr M. King. (mja,) (Entered: 04/04/2006)
04/05/2006	19	Scheduling Order by Garr M. King. Order - At the parties' request, the court is setting a Telephone Conference for 4/7/2006 at 02:00PM. The court will initiate the call to the following parties: Jessica Ashlee Albies(503) 367-8590, Steven Goldberg (503) 224-2372, Zaha S Hassan 503-230-8311, Thomas H. Nelson (503) 230-8311, Anthony J. Coppelino (202) 514-4782, Andrea Marie Gacki (202) 514-4336, and Andrew H. Tannenbaum (202) 514-4263.Ordered by Judge Garr M. King. (mja,) (Entered: 04/05/2006)
04/06/2006	20	Order Granting Application for Special Admission Pro Hac Vice of Jon B. Eisenberg for Asim Ghafoor, Al-Haramain Islamic Foundation, Inc., and Wendell Belew. Application Fee in amount of \$100 collected. Receipt No. 8761 issued. Signed on 04/05/06 by Judge Garr M. King. (pvh,) (Entered: 04/06/2006)
04/06/2006	21	Order Granting Application for Special Admission Pro Hac Vice of Lisa R. Jaskol for Asim Ghafoor, Al-Haramain Islamic Foundation, Inc. and Wendell Belew. Application Fee in amount of \$100 collected. Receipt No. 8762 issued. Signed on 04/05/06 by Judge Garr M. King. (pvh,) (Entered: 04/06/2006)
04/07/2006	22	MINUTES of Telephone Conference: Order - At the parties' request the court is setting a briefing schedule as follows: Defendants shall file an answer to the complaint or dispositive motion by 6/9/2006. Defendants' memorandum regarding plaintiff's continued access to the sealed document is due by 5/26/2006.Plaintiff's response is due by 6/20/2006. Defendants' reply is due 10 days after plaintiff's response. Jessica Ashlee Albies and Steven Goldberg present as counsel for plaintiff(s). Anthony Coppelino, Andrea Gacki, Andrew Tannenbaum and Jim Sutherlin present as counsel for defendant(s). Court Reporter: Nancy Walker. Garr M. King presiding. (mja,) (Entered: 04/07/2006)
04/10/2006	23	Order - The Regional Security Specialist is directed to move the sealed document from the SCIF in Seattle to the SCIF in Portland as discussed during the telephone conference of April 7, 2006. Ordered by Judge Garr M. King. (mja,) (Entered: 04/10/2006)
04/14/2006	24	Response in Opposition to <i>Motion to Unseal Records and to Motion to intervene</i> , 7 . Filed by all defendants. (Attachments: # 1 Attachment A - OFAC Declaration# 2 Attachment B - FBI Declaration# 3 Attachment C - Court Transcript)(Gacki, Andrea) (Entered: 04/14/2006)

04/14/2006	25	Notice re Motion to intervene, 7 of <i>Lodging of Ex Parte, In Camera Classified Material</i> . Filed by Andrea Marie Gacki appearing on behalf of all defendants. (Related document(s): Motion to intervene, 7 .) (Gacki, Andrea) (Entered: 04/14/2006)
04/19/2006	26	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference for 4/25/2006 at 01:30PM, to discuss Plaintiffs' letter of 4/14/2006 and any more formal objections filed by Plaintiffs before the Telephone Conference. The court will initiate the call to the following parties: Jessica Ashlee Albies(503) 367-8590, Steven Goldberg (503) 224-2372, Zaha S Hassan 503-230-8311, Thomas H. Nelson (503) 230-8311, Anthony J. Coppolino (202) 514-4782, Andrea Marie Gacki (202) 514-4336, and Andrew H. Tannenbaum (202) 514-4263. Ordered by Judge Garr M. King. (Entered: 04/19/2006)
04/20/2006	27	Motion for Leave to participate in Oral Argument and, Motion for permission for Reporter to Observe Hearing on April 25, 2006. Expedited Hearing Requested. Filed by Oregon Publishing Company. (pvh,) (Entered: 04/21/2006)
04/20/2006	28	Memorandum in Support. Filed by Oregon Publishing Company. (Related document(s): Motion for Leave to participate in Oral Argument and, Motion for permission for Reporter to Observe Hearing 27 .) (pvh,) (Entered: 04/21/2006)
04/21/2006	29	ORDER - Oregonian Publishing Company's Motion for Leave to Participate in Oral Argument and for Permission for Reporter to Observe Hearing on April 25, 2006 27 is granted in part and denied in part. Oregonian Publishing Company's attorney may participate in the telephone conference. A reporter from the Oregonian may not listen to the proceedings. Pursuant to the usual practice, a transcript of the telephone conference will be available to the public. Ordered by Judge Garr M. King. (mja,) (Entered: 04/21/2006)
04/24/2006	30	Memorandum in Opposition to <i>Defendants' Lodging of Material Ex Parte and In Camera</i> . Filed by all plaintiffs.(Nelson, Thomas) (Entered: 04/24/2006)
04/25/2006	31	MINUTES of Telephone Conference: Order - The Oregonian's Motion to Intervene 7 is GRANTED. The Oregonian's Motion to Unseal Records 7 is DEFERRED. Oregonian shall have until 5/22/2006 to reply to the government's response to the Oregonian's Motion to Unseal. Defendants may file a response to Plaintiffs' Opposition to Defendants' Lodging of Material Ex Parte and In Camera by 5/12/2006. Plaintiffs and the Oregonian can reply to the defendants' response by 5/22. Defendants may file a sur-reply by 5/25/2006, if necessary. Jessica Albies, Steven Goldberg, Lisa Jaskol, Thomas Nelson and Zaha Hassan present as counsel for plaintiff(s). Andrea Gacki, Anthony Coppolino and Jim Sutherlin present as counsel for defendant(s). Charles Hinkle present as counsel for intervenor. Court Reporter: Dennis Grube. Garr M. King presiding.(mja,) Modified on 4/25/2006 (mja,). (Entered: 04/25/2006)
05/12/2006	32	Memorandum in Opposition to <i>Plaintiffs' Opposition to Defendants' Lodging of Material Ex Parte and In Camera</i> . Filed by all defendants. (Attachments: # 1 Attachment 1 - Transcript# 2 Attachment 2 - Supp. Hourihan Declaration# 3 Attachment 3 - Hackett Declaration)(Gacki, Andrea) (Entered: 05/12/2006)
05/12/2006	33	Notice re Response in Opposition to Motion, 24 of <i>Lodging of Superseding Ex Parte, In Camera Classified Material</i> . Filed by Andrea Marie Gacki appearing on behalf of all defendants. (Related document(s): Response in Opposition to

		Motion, 24.)(Gacki, Andrea) (Entered: 05/12/2006)
05/22/2006	34	Sur-Response to <i>Defendants' Response to Filing of Material Ex Parte and In Camera</i> . ORAL ARGUMENT requested. Filed by all plaintiffs.(Nelson, Thomas) (Entered: 05/22/2006)
05/22/2006	35	Motion to Compel <i>Discovery</i> . Oral Argument requested Filed by all plaintiffs. (Goldberg, Steven) (Entered: 05/22/2006)
05/22/2006	36	Memorandum in Support of <i>Motion to Compel</i> . Filed by all plaintiffs. (Related document(s): Motion to compel 35.) (Attachments: # 1 Exhibit)(Goldberg, Steven) (Entered: 05/22/2006)
05/22/2006	37	Reply <i>Memorandum in Support of Motion to Unseal Document</i> . Filed by Oregon Publishing Company.(Hinkle, Charles) (Entered: 05/22/2006)
05/25/2006	38	Sur-Reply to the <i>Oregonian's Reply in Support of the Motion to Unseal and to Plaintiffs' Reply Regarding Ex Parte and In Camera Material</i> . Filed by all defendants.(Gacki, Andrea) (Entered: 05/25/2006)
05/26/2006	39	Motion to Prevent Plaintiffs' Access to the Sealed Classified Document. ORAL ARGUMENT requested Filed by all defendants. (Gacki, Andrea) (Entered: 05/26/2006)
05/26/2006	40	Memorandum in Support of <i>Defendants' Motion to Prevent Plaintiffs' Access to the Sealed Classified Document</i> . Filed by all defendants. (Related document(s): Motion 39.) (Attachments: # 1 Attachment 1 - Transcript# 2 Attachment 2 - Letter# 3 Attachment 3 - Haddad opinion# 4 Attachment 4 - Al-Aqeel Am. Compl.)(Gacki, Andrea) (Entered: 05/26/2006)
06/01/2006	41	Motion for Extension of Time to Respond Both to the Complaint and to Plaintiffs' Motion to Compel. Filed by all defendants. (Gacki, Andrea) (Entered: 06/01/2006)
06/02/2006	42	Response to Motion for Extension of Time 41 . Filed by all plaintiffs.(Goldberg, Steven) (Entered: 06/02/2006)
06/07/2006	43	ORDER - Defendants' Motion for Extension of Time to Respond Both to the Complaint and to Plaintiffs' Motion to Compel 41 is GRANTED in PART and DENIED in PART. The time to respond to the Complaint is extended to 6/16/06, and time to respond to the Motion to Compel is extended until 6/16/06. Defendants' request to file a consolidated response is DENIED. Plaintiffs' request to file a reply to Defendants' response to the Motion to Compel is GRANTED, with the reply due by 6/30/06. Plaintiffs' request for extension of time to respond to any dispositive motion is noted and will be considered if such motion is filed. The discovery deadline is extended at Plaintiffs' request and will be reset in a future telephone conference with the parties. Ordered by Judge Garr M. King. (mja,) (Entered: 06/07/2006)
06/07/2006	44	Transcript of Telephone Conference Proceedings held on April 7, 2006 before Judge Garr M. King. Court Reporter: Nancy M. Walker. (pvh,) (Entered: 06/09/2006)
06/09/2006	45	Motion for Protective Order <i>Barring the Deposition of Barbara C. Hammerle</i> . Oral Argument requested Filed by all defendants. (Gacki, Andrea) (Entered: 06/09/2006)

06/09/2006	46	Memorandum in Support of <i>Defendants' Motion for a Protective Order Barring the Deposition of Barbara C. Hammerle</i> . Filed by all defendants. (Related document(s): Motion for Protective Order 45 .) (Attachments: # 1 Attachment 1 - Notice of Deposition# 2 Attachment 2 - Declaration of Barbara Hammerle) (Gacki, Andrea) (Entered: 06/09/2006)
06/15/2006	47	Unopposed Motion for Extension of Time to <i>Respond to Complaint and Motion to Compel</i> . Filed by all defendants. (Coppolino, Anthony) (Entered: 06/15/2006)
06/16/2006	48	ORDER - Granting Defendants' Unopposed Motion for Second Extension of Time to Respond to Complaint and to Plaintiffs' Motion to Compel 47 . The time to respond to the Complaint is extended to 6/21/2006. The time to respond to the Motion to Compel is extended to 6/21/2006. Plaintiffs' time to reply to Defendants' response to the Motion to Compel is extended to 7/6/2006. Ordered by Judge Garr M. King. (mja,) (Entered: 06/16/2006)
06/16/2006	49	Response in Opposition to <i>Defendants' Motion to Deny Access to Sealed Document</i> to Motion 39 Oral Argument requested. Filed by all plaintiffs. (Attachments: # 1 Exhibit 1 - Declaration of Lynne Bernabei# 2 Exhibit 2 - Declaration of Wendell Belew# 3 Exhibit 3 - Declaration of Asim Ghafoor# 4 Exhibit 4 - Declaration of Thomas H. Nelson (redacted, original filed under seal) # 5 Exhibit 5 - Plaintiffs' Proposed Protective Order and Agreement)(Nelson, Thomas) (Entered: 06/16/2006)
06/19/2006	50	AMENDED Order - Granting Defendants' Unopposed Motion for Second Extension of Time to Respond to Complaint and to Plaintiffs' Motion to Compel 47 . The time to respond to the Complaint is extended to 6/21/2006. The time to respond to the Motion to Compel is extended to 6/21/2006. Plaintiffs requested a corresponding extension of time to file their response, to which defendants did not object. Plaintiffs' time to reply to Defendants' response to the Motion to Compel is extended to 7/11/2006. Ordered by Judge Garr M. King. (mja,) (Entered: 06/19/2006)
06/19/2006	51	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference to discuss Plaintiffs' recent filing for 6/19/2006 at 01:00PM. The Court will initiate the call to the following parties: Steven Goldberg (503) 224-2372, Zaha S. Hassan (503) 230-8311, Lisa R. Jaskol (818) 995-5820, Thomas H. Nelson (503) 230-8311, Andrea Marie Gacki (202) 514-4336, Andrew H. Tannenbaum (202) 514-4263 and Anthony J. Coppolino (202) 514-4782. Ordered by Judge Garr M. King. (mja,) (Entered: 06/19/2006)
06/19/2006	52	MINUTES of Telephone Conference: Order - Plaintiffs' recent filing discussed as stated on the record. Jessica Ashlee Albies, John Eisenberg, Steven Goldberg, Zaha Hassan, and Lisa Jaskol present as counsel for plaintiff(s). Andrew Tannenbaum, Jim Sutherland, Carl Nichols, and Andrea Gacki present as counsel for defendant(s). Court Reporter: Nancy Walker. Garr M. King presiding. (mja,) (Entered: 06/19/2006)
06/19/2006	53	Motion to Continue and <i>Abey Proceedings on Defendants' Motion for Protective Order</i> . Filed by all plaintiffs. (Attachments: # 1 Exhibit 1 - Proposed Order Abeying Proceedings Pending Resolution of Motion to Dismiss) (Nelson, Thomas) (Entered: 06/19/2006)
06/21/2006	54	Motion to File Excess Pages in <i>Response to the Complaint and the Motion to</i>

		<i>Compel</i> re Motion to compel 35 . Filed by all defendants. (Gacki, Andrea) (Entered: 06/21/2006)
06/21/2006	55	Response in Opposition to Motion to compel 35 . Filed by all defendants. (Attachments: # 1 Attachment 1 - Declaration of DNI# 2 Attachment 2 - Declaration of NSA Director)(Gacki, Andrea) (Entered: 06/21/2006)
06/21/2006	56	<i>Notice of Lodging of In Camera, Ex Parte Materials</i> . Filed by Andrea Marie Gacki appearing on behalf of all defendants.(Gacki, Andrea) (Entered: 06/21/2006)
06/21/2006	57	Amended Motion to File Excess Pages <i>in Response to the Complaint and Motion to Compel</i> re Motion to compel 35 . Filed by all defendants. (Gacki, Andrea) (Entered: 06/21/2006)
06/21/2006	58	Motion to Dismiss <i>or, in the Alternative, for Summary Judgment</i> . Filed by all defendants. (Tannenbaum, Andrew) (Entered: 06/21/2006)
06/21/2006	59	Memorandum in Support of the United States' Assertion of the Military and State Secrets Privilege and Defendants' Motion to Dismiss <i>or, in the Alternative, for Summary Judgment</i> . Filed by all defendants. (Related document(s): Motion to Dismiss 58 .) (Attachments: # 1 Exhibit Declaration of John D. Negroponte, Director of National Intelligence# 2 Exhibit Declaration of Lt. Gen. Keith B. Alexander, Director, National Security Agency)(Tannenbaum, Andrew) (Entered: 06/21/2006)
06/22/2006	60	ORDER: It is ordered that the proceedings relating to defendants' motion for protective order be held in abeyance pending resolution of defendants' anticipated motion to dismiss. Plaintiffs will not pursue the deposition of Barbara Hammerle while defendants' motion for protective order is in abeyance. 53 Signed on 6/22/06 by Judge Garr M. King. (md,) (Entered: 06/23/2006)
06/23/2006	61	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference to discuss Plaintiffs' letter of June 23, 2006, for 6/27/2006 at 01:15PM. The court will initiate the call to the following parties: Steven Goldberg (503) 224-2372, Zaha S. Hassan (503) 230-8311, Lisa R. Jaskol (818) 995-5820, Thomas H. Nelson (503) 230-8311, Andrea Marie Gacki (202) 514-4336, Andrew H. Tannenbaum (202) 514-4263 and Anthony J. Coppolino (202) 514-4782. Ordered by Judge Garr M. King. (mja,) (Entered: 06/23/2006)
06/26/2006	62	<i>Notice of Motion to Transfer to the Joint Panel on Multidistrict Litigation</i> . Filed by Andrew H. Tannenbaum appearing on behalf of all defendants. (Attachments: # 1 Exhibit 1# 2 Exhibit 2)(Tannenbaum, Andrew) (Entered: 06/26/2006)
06/27/2006	63	MINUTES of Telephone Conference: Order - Plaintiffs have advised the court that they intend to rely on the sealed document and the sealed Declaration of Thomas Nelson filed in this case in their responses to defendants' Motion to Transfer to the Joint Panel on Multidistrict Litigation ("JPML"). In the Motion to Transfer, defendants seek to have this case transferred to the U.S. District Court for the District of Columbia for consolidation with other cases in which defendants are asserting the state secrets privilege. Plaintiffs have requested that the sealed document and sealed Declaration be made available to the JPML. Defendants are hereby ordered to make copies, using secure means, of both the sealed document and sealed Declaration which are currently held in the SCIF in Portland, to retain the originals in the Portland SCIF, and to transfer the copies

		<p>by secure means to the appropriate security officer in the U.S. District Court for the District of Columbia for placement in a SCIF to which that court has access. Defendants have represented that the copies can thereafter be transferred securely to a SCIF accessible by the JPML within 24 hours of the JPML's request for the documents in advance of the scheduled argument in Chicago. Pending before the court are several motions. Defendants' Amended Motion to File Excess Pages in Response to the Complaint and Motion to Compel 57 is granted, and the Motion to File Excess Pages in Response to the Complaint and Motion to Compel 54 is dismissed as moot. Defendants' reply to the plaintiffs' Opposition to Defendants' Motion to Deny Access to Sealed Document is due June 30, 2006. Plaintiffs' response to the Motion to Dismiss is due July 11, 2006. Defendants' reply to the plaintiffs' response to the Motion to Dismiss is due July 25, 2006. As previously ordered, plaintiffs' reply to the defendants' Response in Opposition to Motion to Compel Discovery is due July 11, 2006. Setting Oral Argument on Defendants' Motion to Dismiss, the Plaintiffs' Motion to Compel Discovery, the Defendants' Motion to Deny Plaintiffs Access to Sealed Document, and the Oregon Publishing Company's Motion to Unseal Records for Tuesday, August 29, 2006 at 9:30AM, in Portland, Courtroom 9A, before Judge Garr M. King. Jessica Albies, Jon Eisenberg, Steven Goldberg, Zaha Hassan, Thomas Nelson, and Lisa Jaskol present as counsel for plaintiff(s). Tony Coppolini, Andrew Tannenbaum, Jim Sutherlin present as counsel for defendant (s). Court Reporter: Nancy Walker. Garr M. King presiding. (Entered: 06/27/2006)</p>
06/30/2006	64	<p>Reply to Motion to Prevent Plaintiffs' Access to the Sealed Classified Document 39 Oral Argument requested. Filed by all defendants.(Gacki, Andrea) (Entered: 06/30/2006)</p>
07/10/2006	65	<p>Reply to Defendants' Opposition to Plaintiffs' Motion for Order Compelling Discovery ORAL ARGUMENT requested. Filed by all plaintiffs.(Goldberg, Steven) (Entered: 07/10/2006)</p>
07/10/2006	66	<p>Response in Opposition to Motion to Dismiss 58 Oral Argument requested. Filed by all plaintiffs.(Nelson, Thomas) (Entered: 07/10/2006)</p>
07/25/2006	67	<p>Reply Defendants' Reply in Support of to Motion to Dismiss or, in the Alternative, for Summary Judgment(58 in 3:06-cv-00274-KI). Filed by all defendants.Associated Cases: 3:06-cv-00274-KI, 3:06-cv-00553-AA(Coppolino, Anthony) Additional attachment(s) added on 8/1/2006 (jlr,). (Entered: 07/25/2006)</p>
07/25/2006	68	<p>Unopposed Motion to File Excess Pages for Defendants' Reply in Support of Motion to Dismiss or for Summary Judgment. Filed by George W Bush, National Security Agency, Keith B. Alexander, Office of Foreign Assets Control, Robert W. Werner, Federal Bureau of Investigation, Robert S. Mueller, III.Associated Cases: 3:06-cv-00274-KI, 3:06-cv-00553-AA (Coppolino, Anthony) Additional attachment(s) added on 8/1/2006 (jlr,). (Entered: 07/25/2006)</p>
07/25/2006	69	<p>Notice of Lodging in Camera Reply in Support of Defendants' Motion to Dismiss or for Summary Judgment. Filed by Anthony J. Coppolino appearing on behalf of George W Bush, National Security Agency, Keith B. Alexander, Office of Foreign Assets Control, Robert W. Werner, Federal Bureau of Investigation, Robert S. Mueller, III.Associated Cases: 3:06-cv-00274-KI, 3:06-cv-00553-AA (Coppolino, Anthony) Additional attachment(s) added on 8/1/2006 (jlr,).</p>

		(Entered: 07/25/2006)
08/01/2006	70	Order regarding Unopposed Motion to File Excess Pages <i>for Defendants' Reply in Support of Motion to Dismiss or for Summary Judgment</i> 68 filed by Robert S. Mueller, III, Office of Foreign Assets Control, George W Bush, Keith B. Alexander, Robert W. Werner, National Security Agency, Federal Bureau of Investigation, Notice, 69 filed by Robert S. Mueller, III, Office of Foreign Assets Control, George W Bush, Keith B. Alexander, Robert W. Werner, National Security Agency, Federal Bureau of Investigation, Reply to Motion, 67 filed by Robert S. Mueller, III, Office of Foreign Assets Control, George W Bush, Keith B. Alexander, Robert W. Werner, National Security Agency, Federal Bureau of Investigation for Administrative Correction of the Record. A Clerical error has been discovered in the case record. In accordance with Fed. R. Civ. P. 60(a), the Clerk is directed to make the following administrative corrections to the record and to notify all parties accordingly. The PDF documents are now attached to documents 67,68, and 69 and are also attached to this entry. (Attachments: # 1 Reply in Support of Motion To Dismiss; # 2 Unopposed Motion To File Excess Pages; # 3 Notice of Lodging In Camera Reply) (jlr,) (Entered: 08/01/2006)
08/03/2006	71	Order - With briefing now complete, the court has requested that the Department of Justice Litigation Security Group deliver the classified filings lodged in this case to the SCIF in Portland so that they are readily accessible to the court. The court has not yet made a decision whether in camera, ex parte review of these filings is appropriate. Ordered by Judge Garr M. King. (mja,). (Entered: 08/03/2006)
08/04/2006	72	ORDER - Granting Defendants' Unopposed Motion to File Excess Pages for Defendants' Reply in Support of Motion to Dismiss or for Summary Judgment 68 . The Court has not yet made a decision whether in camera, ex parte review of this filing is appropriate. Ordered by Judge Garr M. King. (mja,) (Entered: 08/04/2006)
08/14/2006	73	<i>Notice of Decision by the Judicial Panel on Multidistrict Litigation</i> . Filed by Andrea Marie Gacki appearing on behalf of all defendants. (Attachments: # 1 Exhibit 1 - MDL Transfer Order) (Gacki, Andrea) (Entered: 08/14/2006)
08/15/2006	74	<i>Response to Defendants' Notice of Decision by The Judicial Panel on Multidistrict Litigation</i> . Filed by all plaintiffs. (Related document(s): Notice 73 .) (Attachments: # 1 Attachment Interested Parties Response to the United States' Motion for Transfer and Coordination) (Goldberg, Steven) (Entered: 08/15/2006)
08/16/2006	75	<i>Reply to Plaintiffs' Response to Notice of Decision by the Judicial Panel on Multidistrict Litigation</i> . Filed by all defendants. (Related document(s): Notice 73 .) (Tannenbaum, Andrew) (Entered: 08/16/2006)
08/17/2006	76	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference to discuss the Defendants' Notice of Decision by the Judicial Panel on Multidistrict Litigation 73 for 8/18/2006 at 10:00AM. The court will initiate the call to the following parties: Steven Goldberg (503) 224-2372, Zaha S. Hassan (503) 230-8311, Lisa R. Jaskol (818) 995-5820, Thomas H. Nelson (503) 230-8311, Andrea Marie Gacki (202) 514-4336, Jim Sutherlin (503) 727-1194, Andrew H. Tannenbaum (202) 514-4263 and Anthony J. Coppolino (202) 514-4782. Ordered by Judge Garr M. King. (mja) (Entered: 08/17/2006)

08/18/2006	77	MINUTES of Telephone Conference: Order - defendants' request to delay or stay proceedings is denied. Judge King will review ex parte in camera filings made by defendants in June and July. Jon B. Eisenberg, Zaha Hassan, Lisa Jaskol and Jessica Albies present as counsel for plaintiff(s). Jim Sutherland, Andrew Tannenbaum and Andrea Gacki present as counsel for defendant(s). Court Reporter: Dennis Grube. Garr M. King presiding. (mja) (Entered: 08/18/2006)
08/29/2006	78	MINUTES of Oral Argument Hearing: Order - The Oregon Publishing Company's Motion to Unseal Records 7 , Plaintiffs' Motion to Compel Discovery 35 , the Defendants' Motion to Deny Plaintiffs Access to Sealed Document 39 and Defendants' Motion to Dismiss 58 , are taken under advisement as of 8/29/2006. Steven Goldberg, Jessica Albies, Saha Hassan, Lisa Jaskol, Thomas Nelson and Jon Eisenberg present as counsel for plaintiffs. Andrea Gacki, Andrew Tannenbaum and Anthony Coppolino Present as Counsel for defendants. Charles Hinkle present as counsel for interested party. Court Reporter: Nancy Walker. Garr M. King presiding. (mja) (Entered: 08/29/2006)
09/07/2006	79	OPINION AND ORDER. The government's Motion to Dismiss, or, in the Alternative, for Summary Judgment (#58) is denied, but the government has leave to renew its Motion for Summary Judgment. The government's Motion to Prevent Plaintiffs' Access to the Sealed Classified Document (#39) is granted. Plaintiffs' Motion for Order Compelling Discovery (#35) is denied with leave to renew. Oregonian Publishing Company's Motion to Intervene was previously granted, but its Motion to Unseal Records (#7) is denied. IT IS SO ORDERED. Signed on 09/07/06 by Judge Garr M. King. (pvh) (Entered: 09/07/2006)
09/11/2006	80	Transcript of Motion Hearing Proceedings held on 08/29/06 before Judge Garr M. King. Court Reporter: Nancy M. Walker. (pvh) (Entered: 09/12/2006)
10/04/2006	81	Order - The court grants the government's letter request that it be permitted to file a motion to stay proceedings while its petition for interlocutory review is pending. Ordered by Judge Garr M. King. (mja) (Entered: 10/04/2006)
10/24/2006	82	Motion for Stay <i>Defendants' Motion for a Stay of Proceedings Pending Interlocutory Appeal</i> . Filed by all defendants. (Coppolino, Anthony) (Entered: 10/24/2006)
10/24/2006	83	Memorandum in Support of <i>Motion to Stay Proceedings Pending Interlocutory Appeal</i> . Filed by all defendants. (Coppolino, Anthony) (Entered: 10/24/2006)
10/26/2006	84	Transcript of Telephone Conference Proceedings held on 06/19/06 before Judge Garr M. King. Court Reporter: Nancy M. Walker. (pvh) (Entered: 10/26/2006)
10/30/2006	85	Motion for Partial Summary Judgment <i>Of Liability Or, Alternatively, For Partial Summary Adjudication of Specific Issues Within Claims</i> . Oral Argument requested Filed by all plaintiffs. (Goldberg, Steven) (Entered: 10/30/2006)
10/30/2006	86	Concise Statement of Material Fact. Filed by all plaintiffs. (Related document(s): Motion for Partial Summary Judgment 85 .) (Goldberg, Steven) (Entered: 10/30/2006)
10/30/2006	87	Memorandum in Support of <i>Plaintiffs' Motion for Partial Summary Judgment of Liability or, Alternatively, for Partial Summary Adjudication of Specific Issues Within Claims</i> . Filed by all plaintiffs. (Related document(s): Motion for Partial

		Summary Judgment ⁸⁵ .) (Goldberg, Steven) (Entered: 10/30/2006)
10/30/2006	88	Declaration of Steven Goldberg <i>in Support of Plaintiffs' Motion for Partial Summary Judgment or Adjudication</i> . Filed by all plaintiffs. (Related document (s): Motion for Partial Summary Judgment ⁸⁵ .) (Attachments: # 1 Exhibit A to Declaration of Steven Goldberg# 2 Exhibit B to Declaration of Steven Goldberg# 3 Exhibit C to Declaration of Steven Goldberg# 4 Exhibit D to Declaration of Steven Goldberg# 5 Exhibit E to Declaration of Steven Goldberg# 6 Exhibit F to Declaration of Steven Goldberg# 7 Exhibit G to Declaration of Steven Goldberg# 8 Exhibit H to Declaration of Steven Goldberg# 9 Exhibit I to Declaration of Steven Goldberg) (Goldberg, Steven) (Entered: 10/30/2006)
10/31/2006	89	Scheduling Order by Garr M. King. Order - Setting a Telephone Conference to discuss the parties' recent submission to the court for 11/1/2006 at 01:30PM. The court will initiate the call to the following parties: Steven Goldberg (503) 224-2372, Zaha S. Hassan (503) 230-8311, Lisa R. Jaskol (818) 995-5820, Thomas H. Nelson (503) 230-8311, Andrea Marie Gacki (202) 514-4336, Jim Sutherlin (503) 727-1194, Andrew H. Tannenbaum (202) 514-4263 and Anthony J. Coppelino (202) 514-4782. Ordered by Judge Garr M. King. (mja) (Entered: 10/31/2006)
11/01/2006	90	Response in Opposition to Motion for Stay <i>Defendants' Motion for a Stay of Proceedings Pending Interlocutory Appeal</i> ⁸² Oral Argument requested. Filed by all plaintiffs. (Goldberg, Steven) (Entered: 11/01/2006)
11/01/2006	91	MINUTES of Telephone Conference: Order - Handling of documents discussed as stated on the record. Steven Goldberg, Jon Eisenberg, Jessica Albies, Zaha Hassan and Lisa Jaskol present as counsel for plaintiff(s). Andrew Tannenbaum, Anthony Coppelino, Andrea Gacki and James Sutherland present as counsel for defendant(s). Court Reporter: Karen Eichhorn. Phone (503) 936-4805. Garr M. King presiding. (mja) (Entered: 11/01/2006)
11/02/2006	92	Transcript of Proceedings held on 11/01/06 before Judge Garr M. King. Court Reporter: Karen N. Eichhorn. (pvh) (Entered: 11/02/2006)
11/15/2006	93	Reply <i>in Support of Defendants' Motion</i> to Motion for Stay <i>Defendants' Motion for a Stay of Proceedings Pending Interlocutory Appeal</i> ⁸² . Filed by George W Bush, National Security Agency, Keith B. Alexander, Office of Foreign Assets Control, Robert W. Werner, Federal Bureau of Investigation, Robert S. Mueller, III. (Coppelino, Anthony) (Entered: 11/15/2006)
12/20/2006	94	Conditional Transfer Order dated 12/15/06 transferring this case to the USDC for the Northern District of California pursuant to Docket No. 1791. Signed & sealed on 12/15/06 by Willial Terrell Hodges, Chairman of the MDL Panel. (mkk) (Entered: 12/20/2006)
12/20/2006	95	Order - For purposes of clarifying the docket prior to transferring the case, the Court did not issue a decision on defendants' Motion to Stay Pending Appeal (#82), and halted the briefing schedule on plaintiffs' Motion for Summary Judgment (#85), pending the decision of the Judicial Panel on Multidistrict Litigation. In addition, the defendants' Motion for Protective Order Barring Deposition of Barbara C. Hammerle (#45) was held in abeyance on June 22, 2006, pending the outcome of defendants' Motion to Dismiss. That motion for

		protective order is now denied with leave to renew given this court's Opinion and Order on defendants' Motion to Dismiss. Ordered by Judge Garr M. King. (mja) (Entered: 12/20/2006)
12/26/2006	96	Certified Copy of Order from USCA for the 9th Circuit. The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is GRANTED . Within 10 days of this order, petitioners shall perfect the appeal pursuant to Federal Rule of Appellate Procedure 5(d). See also 9th Cir. R. 3.1(c). The Clerk is directed to open a new docket number for this appeal. (Case #06-80134 assigned.). Petitioners' alternate motion to hold this appeal in abeyance pending resolution by this court of <i>Hepting v. AT&T Corp.</i> , appeal No. 06-17132, and <i>Hepting v. United States</i> , appeal No. 06-17137, shall be addressed by separate order. Filing Fee must be paid by 1/10/2007.(eo) (Entered: 12/27/2006)
01/05/2007	97	Transcript of Telephonic Conference Proceedings held on 03/20/06 before Judge Garr M. King. Court Reporter: Dennis R. Grube. (pvh) (Entered: 01/08/2007)
01/05/2007	98	Transcript of Telephone Conference Proceedings held on 03/21/06 before Judge Garr M. King. Court Reporter: Bonita J. Alexander.. (pvh) (Entered: 01/08/2007)
01/05/2007	99	Transcript of Telephonic Conference Proceedings held on 04/25/06 before Judge Garr M. King. Court Reporter: Dennis R. Grube. (pvh) (Entered: 01/08/2007)
01/18/2007	100	Transcript of Proceedings held on June 27, 2006 before Judge Garr M. King. Court Reporter: Nancy Walker. (eo) (Entered: 01/22/2007)

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**U.S. District Court
California Northern District (MDL)
CIVIL DOCKET FOR CASE #: M:06-cv-01791-VRW**

In re National Security Agency Telecommunications Records
Litigation

Assigned to: Hon. Vaughn R. Walker

Lead case: [M:06-cv-01791-VRW](#)

Member cases:

Date Filed: 08/14/2006

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

[3:06-cv-00672-VRW](#)

[3:06-cv-03467-VRW](#)

[3:06-cv-03574-VRW](#)

[3:06-cv-03596-VRW](#)

[3:06-cv-04221-VRW](#)

[3:06-cv-05063-VRW](#)

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[3:06-cv-06924-VRW](#)

[3:06-cv-07934-VRW](#)

[3:07-cv-00109-VRW](#)

[3:07-cv-00464-VRW](#)

[3:07-cv-00693-VRW](#)

[3:07-cv-01187-VRW](#)

[3:07-cv-01242-VRW](#)
[3:07-cv-01243-VRW](#)
[3:07-cv-01323-VRW](#)
[3:07-cv-01324-VRW](#)
[3:07-cv-01326-VRW](#)
[3:07-cv-01396-VRW](#)
[3:07-cv-02029-VRW](#)

Cause: 28:1331 Fed. Question

Date Filed	#	Docket Text
12/19/2006	97	Transfer Order signed by William Terrell Hodges, Chairman, Judicial Panel on Multidistrict Litigation. (gsa, COURT STAFF) (Filed on 12/19/2006) (Entered: 12/21/2006)
12/21/2006	108	Minute Entry: Motions Hearing held on 12/21/2006 before Chief Judge Vaughn R Walker (Date Filed: 12/21/2006). (Court Reporter Connie Kuhl.) (cgd, COURT STAFF) (Date Filed: 12/21/2006) (Entered: 12/29/2006)
12/22/2006	98	RESPONSE in Support re 67 MOTION to Stay <i>MDL Proceedings</i> filed by Sprint Nextel Corporation. (Kester, John) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	99	RESPONSE in Support re 67 MOTION to Stay <i>MDL Proceedings</i> filed by Comcast Telecommunications, Inc.. (Soriano, Christopher) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	100	MOTION for Joinder in <i>United States' Motion to Stay Proceedings Pending Disposition of Interlocutory Appeals In Hepting v. AT&T Corp.</i> ; <i>Memorandum of Law</i> filed by AT&T Corp.. Motion Hearing set for 2/9/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Exhibit Exhibits A and B)(Ericson, Bruce) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	101	Joinder re 67 MOTION to Stay <i>MDL Proceedings</i> by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Wireless Services, Inc., Verizon Maryland, Inc., Cellco Partnership, MCI, LLC. (Boynton, Brian) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	102	Memorandum in Opposition re 94 MOTION for Administrative Relief filed by Verizon Maryland, Inc.. (Attachments: # 1 Proposed Order)(Boynton, Brian) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	103	ORDER by Judge Vaughn R Walker granting 54 Motion to Substitute Attorney. Attorney Richard Radke, Jr terminated. James P. Walsh substituting. (cgd, COURT STAFF) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	104	Proposed Order <i>Resetting Deadlines</i> by All Plaintiffs. (Cohn, Cindy) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	105	ORDER by Judge Vaughn R Walker granting 55 Motion to Substitute Attorney. Attorney David K. Herzog terminated. Thomas Burke substituting. (cgd, COURT STAFF) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	106	ORDER by Judge Vaughn R Walker granting 56 Motion to Substitute Attorney. Added attorney Thomas R. Burke for Bright House Networks, LLC. (cgd,

		COURT STAFF) (Filed on 12/22/2006) (Entered: 12/22/2006)
12/22/2006	107	Letter to Chief Judge Vaughn Walker from Shayana Kadidal, Esq. dated 12/21/2006 regarding a case that has not yet arrived in San Francisco - CCR v. Bush (06-383) (SDNY), but that has recently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to an order dated 12/15/2006. Lead counsel and co-counsel will be absent until 1/19/2006. Counsel requests that any inquires be directed to William Goodman, Esq. at 212-614-6427 until lead and co-counsel returns. (gsa, COURT STAFF) (Filed on 12/22/2006) (Entered: 12/27/2006)
01/05/2007	109	NOTICE by Charter Communications, LLC <i>of Change of Affiliation of Counsel Relating to Case No. 5:06-CV-0085</i> (Burke, Thomas) (Filed on 1/5/2007) (Entered: 01/05/2007)
01/05/2007	110	NOTICE by Bright House Networks, LLC <i>of Change of Affiliation of Counsel Relating to Case No. 3:06-CV-06224VRW</i> (Burke, Thomas) (Filed on 1/5/2007) (Entered: 01/05/2007)
01/05/2007	111	NOTICE by Bright House Networks, LLC <i>of Change of Affiliation of Counsel Relating to Case No. 3:06-CV-06222VRW</i> (Burke, Thomas) (Filed on 1/5/2007) (Entered: 01/05/2007)
01/05/2007	112	ORDER re 104 filed by All Plaintiffs. Upon the oral stipulation of counsel and agreement of the Court reached during the hearing in this case on 12/21/2006, the Court sets the following schedule, superseding the one contained in its pretrial order, docket #79. Master Complaints to be served and filed by Plaintiffs: 1/16/2007. Opposition to Motion for Stay filed and served: 1/17/2007. Reply to Motion for Stay: 1/30/2007. All parties to Show Cause in writing why the Hepting order should not apply to all cases and claims to which the government asserts the state secrets privilege: 2/1/2007. Hearing on Stay Motion and on the Court's OSC: 2/9/2007 at 2:00 PM. Signed by Chief Judge Vaughn R Walker on 1/5/2007. (cgd, COURT STAFF) (Filed on 1/5/2007) (Entered: 01/05/2007)
01/09/2007	113	Letter from Jon Eisenberg <i>to Judge Walker re: pending motions and discovery conference.</i> (Eisenberg, Jon) (Filed on 1/9/2007) (Entered: 01/09/2007)
01/10/2007	114	CLERK'S NOTICE Advising Counsel of Receipt of the Case Al Haramain Islamic Foundation, Inc., et al -v- George W. Bush, et al from the District of Oregon. (rcs, COURT STAFF) (Filed on 1/10/2007) (Entered: 01/10/2007)
01/11/2007	115	NOTICE of Appearance by Sam Jonathan Alton (Alton, Sam) (Filed on 1/11/2007) (Entered: 01/11/2007)
01/11/2007	119	TRANSCRIPT of Proceedings held on 12/21/2006 before Judge Vaughn R. Walker. Court Reporter: Connie Kuhl.. (gsa, COURT STAFF) (Filed on 1/11/2007) (Entered: 01/12/2007)
01/12/2007	116	STIPULATION of Dismissal <i>filed</i> by Bright House Networks, LLC. (Caldwell, Adam) (Filed on 1/12/2007) (Entered: 01/12/2007)
01/12/2007	117	STIPULATION of Dismissal <i>related to case number 3:06-cv-06224</i> filed by Bright House Networks, LLC. (Caldwell, Adam) (Filed on 1/12/2007) (Entered: 01/12/2007)

01/12/2007	<u>118</u>	STIPULATION of Dismissal <i>filed</i> by Charter Communications, LLC. (Caldwell, Adam) (Filed on 1/12/2007) (Entered: 01/12/2007)
01/13/2007	<u>120</u>	NOTICE by United States Of America <i>of Lodging</i> (Tannenbaum, Andrew) (Filed on 1/13/2007) (Entered: 01/13/2007)
01/16/2007	<u>121</u>	AMENDED COMPLAINT <i>MASTER COMPLAINT AGAINST CINGULAR WIRELESS</i> against AT&T Mobility LLC, Cingular Wireless Corporation, Cingular Wireless LLC, New Cingular Wireless Services, Inc.. Filed by Brian Bradley, Cathy Bruning, Steven Bruning, Kim Coco Iwamoto, Anakalia Kaluna, Steven Lebow, Alan Toly Sapoznik, Sam Goldstein Insurance Agency, Inc., Heather Derosier, Paul Robilotti, Louis Black, Richard A. Grigg, James C. Harrington, Michael Kentor, The Austin Chronicle. (George, R.) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/16/2007	<u>122</u>	NOTICE by Benson B. Roe(individually and on behalf of all others similarly situated) <i>NOTICE OF WITHDRAWAL OF COUNSEL</i> (Finberg, James) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/16/2007	<u>123</u>	AMENDED COMPLAINT <i>MASTER CONSOLIDATED COMPLAINT</i> against T-Mobile USA, Inc., Comcast Telecommunications, Inc., McLeodusa Telecommunications Services, Inc., Transworld Network Corp.. Filed by Travis Cross, Sam Goldstein, Libertarian party of Indiana, Carolyn W. Rader, Sam Goldstein Insurance Agency, Inc., Sean Shepherd, Christopher Yowtz, Rebecca Yowtz. (Scarlett, Shana) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/16/2007	<u>124</u>	AMENDED COMPLAINT <i>Consolidated</i> against Sprint Communications Company L.P., Sprint Nextel Corporation. Filed by Richard D. Suchanek, III. (Mason, Gary) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/16/2007	<u>125</u>	AMENDED COMPLAINT <i>MASTER CONSOLIDATED COMPLAINT AGAINST MCI DEFENDANTS AND VERIZON DEFENDANTS</i> against Verizon Northwest, Inc.(an active Washington Corporation), Verizon Communications, Inc.(an active Delaware corporation), Verizon Communications Inc, Verizon Communications, Inc., Verizon Wireless, LLC, Verizon, Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Wireless Services, Inc., Verizon Wireless LLC, Verizon Maryland, Inc., MCI, LLC, Verizon Communications, Inc.(a corporation), Verizon Communications, Inc., MCI, LLC, Verizon Communications, Inc., Verizon Communications, Inc.. Filed by Elaine Spielfogel-Landis. (Himmelstein, Barry) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/16/2007	<u>126</u>	AMENDED COMPLAINT <i>MASTER CONSOLIDATED COMPLAINT AGAINST BELL SOUTH DEFENDANTS</i> against BellSouth Communication Systems, LLC, BellSouth Telecommunications, Inc., BellSouth Communications Systems, LLC, BellSouth Corp., BellSouth Telecommunications, Inc.. Filed by Linda Gettier, Melissa Scroggins, James Nurkiewicz, Carolyn R. Hensley, Douglas S. Hensley, Heather Derosier, Lisa Lockwood, Joe McMurray, Cathy Bruning, Steven Bruning, Steven Lebow, Clyde Michael Morgan, Ilene Pruett, Anthony Barteley, Stephen M. Kampmann, Tina Herron, Brandy Sergi, John Clark, Thomas Michael Fain, John Fitzpatrick. (Schwarz, Steven) (Filed on 1/16/2007) (Entered: 01/16/2007)
01/17/2007	<u>127</u>	NOTICE by United States Of America <i>of Attorney General's Letter to Congress</i>

		(Attachments: # 1 Letter from the Attorney General to Senators Leahy and Specter (Jan. 17, 2007))(Tannenbaum, Andrew) (Filed on 1/17/2007) (Entered: 01/17/2007)
01/17/2007	128	Memorandum in Opposition to <i>Gov't Motion to Stay</i> filed by Tash Hepting. (Cohn, Cindy) (Filed on 1/17/2007) (Entered: 01/17/2007)
01/17/2007	129	AFFIDAVIT in Opposition to <i>Gov't Motion to Stay</i> filed by Tash Hepting. (Attachments: # 1 Exhibit Ex. 1 - Salon Article# 2 Exhibit Ex 2 - CNET article) (Cohn, Cindy) (Filed on 1/17/2007) (Entered: 01/17/2007)
01/18/2007	130	ORDER denying motion to remand brought by plaintiffs in Riordan (06-3574) and Campbell (06-3596). Signed by Chief Judge Walker on 1/18/07. (vrwlc2, COURT STAFF) (Filed on 1/18/2007) (Entered: 01/18/2007)
01/22/2007	131	NOTICE by Keith B. Alexander, Office of Foreign Assets Control, Robert W. Werner, Federal Bureau of Investigation, George W. Bush, National Security Agency <i>Regarding Transcript Orders in Case No. C-07-0109-VRW</i> (Tannenbaum, Andrew) (Filed on 1/22/2007) (Entered: 01/22/2007)
01/24/2007	132	NOTICE by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., Cellco Partnership, MCI, LLC <i>of Attorney No Longer Associated with this Case</i> (Boynton, Brian) (Filed on 1/24/2007) (Entered: 01/24/2007)
01/25/2007	133	CLERK'S NOTICE Advising Counsel of Receipt of the Case Lebow, et al -v- BellSouth Corp., et al from the Northern District of Georgia. (rcs, COURT STAFF) (Filed on 1/25/2007) (Entered: 01/25/2007)
01/25/2007	134	NOTICE of Change of Address by Justin Isreal Woods <i>Notice of Change of Address by Sidney Bach</i> (Woods, Justin) (Filed on 1/25/2007) (Entered: 01/25/2007)
01/29/2007	135	NOTICE of Appearance by Nicholas A Migliaccio <i>on behalf of Richard D. Suchanek, III</i> (Migliaccio, Nicholas) (Filed on 1/29/2007) (Entered: 01/29/2007)
01/29/2007	136	STIPULATION to <i>Extend Deadline for Replies for Motion to Stay</i> by United States, George W. Bush(President of the United States), National Security Agency, George W. Bush, National Security Agency, United States Of America, United States of America, United States of America. (Haas, Alexander) (Filed on 1/29/2007) (Entered: 01/29/2007)
01/29/2007	137	NOTICE of Appearance by R. James George, Jr <i>for Gary L. Lewis</i> (George, R.) (Filed on 1/29/2007) (Entered: 01/29/2007)
01/30/2007	138	STIPULATION AND ORDER AS MODIFIED. The Government and the Major Carriers shall e-file their replies on the motion to stay no later than 2:00 p.m. PST (5:00 p.m. EST) on 2/1/2007. The Plaintiffs shall e-file their single sur-reply, limited to responding to arguments, if any, in the replies that are based on the Notice of the Foreign Intelligence Surveillance Act Orders, which was filed on 1/17/2007 no later than 2:00 p.m. PST (5:00 p.m. EST) on 2/5/2007. Signed by Judge Vaughn R Walker on 1/30/2007. (cgd, COURT STAFF) (Filed on 1/30/2007) (Entered: 01/30/2007)
01/30/2007	139	STIPULATION AND <i>[PROPOSED] ORDER DEFERRING RESPONSES TO CONSOLIDATED COMPLAINTS</i> by AT&T Corp.. (Axelbaum, Marc) (Filed on

		1/30/2007) (Entered: 01/30/2007)
01/31/2007	140	NOTICE of Substitution of Counsel by Marc H. Axelbaum <i>for the BellSouth Defendants</i> (Axelbaum, Marc) (Filed on 1/31/2007) (Entered: 01/31/2007)
02/01/2007	141	Reply to Opposition 67 <i>in Support of Motion for Stay</i> filed by Sprint Nextel Corporation. (Attachments: # 1) (Kester, John) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	142	Reply Memorandum re 100 MOTION for Joinder <i>in United States' Motion to Stay Proceedings Pending Disposition of Interlocutory Appeals In Hepting v. AT&T Corp.; Memorandum of Law</i> filed by AT&T Corp.. (Axelbaum, Marc) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	143	STIPULATION <i>to Stay Cases Against Cingular</i> by AT&T Mobility Corporation, Cingular Wireless Corporation, Cingular Wireless LLC, New Cingular Wireless Services, Inc., AT&T Mobility LLC. (Axelbaum, Marc) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	144	Declaration of Bruce A. Ericson in Support of 143 Stipulation <i>to Stay Cases Against Cingular</i> filed by Cingular Wireless Corporation, Cingular Wireless LLC, AT&T Mobility LLC, AT&T Mobility Corporation, New Cingular Wireless Services, Inc.. (Related document(s) 143) (Axelbaum, Marc) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	145	Reply Memorandum 67 <i>in Support of United States' Motion for a Stay Pending Disposition of Interlocutory Appeal in Hepting v. AT&T</i> filed by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Wireless Services, Inc., Verizon Wireless LLC, Verizon Maryland, Inc., Cellco Partnership, MCI, LLC. (Boynton, Brian) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	146	Joinder re 141 Reply to Opposition <i>Joinder of Cingular and BellSouth Defendants in Sprint's Reply in Support of Motion for Stay</i> by Bellsouth Communication Systems, LLC, Cingular Wireless Corporation, Cingular Wireless LLC, New Cingular Wireless Services, Inc., BellSouth Corp., BellSouth Telecommunications, Inc.. (Axelbaum, Marc) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	147	Reply to Opposition 67 <i>Reply in Support of United States' Motion for a Stay Pending Appeal</i> filed by United States, Keith B. Alexander, Office of Foreign Assets Control, George W. Bush, National Security Agency, United States Of America. (Coppolino, Anthony) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	148	RESPONSE TO 112 ORDER TO SHOW CAUSE by Pacific Bell Telephone Co., SBC Long Distance LLC, AT&T Communications, AT&T Teleholdings, Illinois Bell, Indiana Bell, SBC Communications, AT&T Operations, Inc., AT&T Communications of California, AT&T Inc.. (Axelbaum, Marc) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	149	RESPONSE TO 112 ORDER TO SHOW CAUSE by Sprint Nextel Corporation. (Kester, John) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)

02/01/2007	<u>150</u>	Response to <u>112</u> Order to Show Cause by Comcast Telecommunications, Inc.. (Soriano, Christopher) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	<u>151</u>	RESPONSE TO <u>112</u> ORDER TO SHOW CAUSE by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Wireless Services, Inc., Verizon Wireless LLC, Verizon Maryland, Inc., Cellco Partnership, MCI, LLC. (Boynnton, Brian) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	<u>152</u>	STIPULATION AND ORDER DEFERRING RESPONSES TO CONSOLIDATED COMPLAINTS. Pursuant to the foregoing Stipulation, and good cause appearing, the Court orders the following: 1. At the hearing on the United States' motion for stay, currently scheduled for 2/9/2007, the Court will address when Defendants must respond to the complaints filed against them. 2. No Defendants need respond to any complaints until the Court sets a date for such a response. Signed by Chief Judge Vaughn R Walker on 2/1/2007. (cgd, COURT STAFF) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	<u>153</u>	RESPONSE TO <u>112</u> ORDER TO SHOW CAUSE by BellSouth Communications Systems, LLC, BellSouth Telecommunications, Inc., Cingular Wireless Corporation, Cingular Wireless LLC, AT&T Mobility LLC, AT&T Mobility Corporation, BellSouth Corp., New Cingular Wireless Services, Inc.. (Axelbaum, Marc) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	<u>154</u>	RESPONSE TO <u>112</u> ORDER TO SHOW CAUSE by United States Of America. (Tannenbaum, Andrew) (Filed on 2/1/2007) Modified on 2/12/2007 (gsa, COURT STAFF). (Entered: 02/01/2007)
02/01/2007	<u>155</u>	Response to Order to Show Cause <u>112</u> Order,,,, <u>79</u> Order <i>CLASS PLAINTIFFS' CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE WHY RULINGS ON HEPTING MOTIONS TO DISMISS SHOULD NOT APPLY</i> by All Plaintiffs. (Himmelstein, Barry) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/01/2007	<u>156</u>	Declaration of BARRY HIMMELSTEIN in Support of <u>155</u> Response to Order to Show Cause, <i>AND REQUEST FOR JUDICIAL NOTICE</i> filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit EXHIBITS P-Z)(Related document(s) <u>155</u>) (Himmelstein, Barry) (Filed on 2/1/2007) (Entered: 02/01/2007)
02/05/2007	<u>157</u>	RESPONSE in Support <i>Surreply in Opposition to Motion to Stay</i> filed by All Plaintiffs. (Cohn, Cindy) (Filed on 2/5/2007) (Entered: 02/05/2007)
02/07/2007	<u>158</u>	NOTICE of Voluntary Dismissal of <i>McLeodUSA Telecommunications Services, Inc.</i> by All Plaintiffs (Attachments: # <u>1</u> Proposed Order)(Parrett, Vincent) (Filed on 2/7/2007) (Entered: 02/07/2007)
02/07/2007	<u>159</u>	NOTICE of Voluntary Dismissal of <i>T-Mobile USA, Inc.</i> by All Plaintiffs (Attachments: # <u>1</u> Proposed Order)(Parrett, Vincent) (Filed on 2/7/2007) (Entered: 02/07/2007)
02/08/2007	<u>160</u>	STIPULATION and <i>[Proposed] Order to Stay Cases Against Sprint</i> by Sprint Nextel Corporation. (Kester, John) (Filed on 2/8/2007) (Entered: 02/08/2007)

02/09/2007	<u>161</u>	Minute Entry: Order to Show Cause and Motion Hearing held on 2/9/2007 before Chief Judge Vaughn R Walker re <u>100</u> MOTION for Joinder in United States' Motion to Stay Proceedings Pending Disposition of Interlocutory Appeals In Hepting v. AT&T Corp.; Memorandum of Law filed by AT&T Corp., <u>67</u> MOTION to Stay MDL Proceedings filed by National Security Agency,, George W. Bush,, United States Of America,, Keith B. Alexander. The Court heard argument from counsel. The Court took the matter(s) under-submission. Court to issue written ruling. (Court Reporter Connie Kuhl.) (cgk, COURT STAFF) (Date Filed: 2/9/2007) (Entered: 02/12/2007)
02/14/2007	<u>162</u>	ORDER granting re <u>158</u> Voluntary Dismissal of McLeod USA Telecommunications Services, Inc. filed by All Plaintiffs. Signed by Chief Judge Vaughn R Walker on 2/14/2007. (cgk, COURT STAFF) (Filed on 2/14/2007) (Entered: 02/14/2007)
02/14/2007	<u>163</u>	STIPULATION AND ORDER GRANTING TO STAY CASES AGAINST SPRINT. Cases C06-6222, C06-6224, C06-6254, C06-6295, C07-0464 stayed. Signed by Chief Judge Vaughn R Walker on 2/14/2007. (cgk, COURT STAFF) (Filed on 2/14/2007) (Entered: 02/14/2007)
02/14/2007	<u>164</u>	ORDER Granting re <u>159</u> Voluntary Dismissal of T-Mobile USA, Inc. filed by All Plaintiffs. Signed by Chief Judge Vaughn R Walker on 2/14/2007. (cgk, COURT STAFF) (Filed on 2/14/2007) (Entered: 02/14/2007)
02/16/2007	<u>165</u>	NOTICE by Keith B. Alexander, George W. Bush, National Security Agency, United States of America, United States Of America <i>of Decision by Judicial Panel on Transfer of State Cases</i> (Attachments: # <u>1</u> Exhibit Exh A -- JPML 021507 Transfer Order)(Haas, Alexander) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007	<u>166</u>	NOTICE of Voluntary Dismissal by Electron Tubes, Inc. (Attachments: # <u>1</u> Proposed Order)(Parrett, Vincent) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007	<u>167</u>	NOTICE by Carolyn Jewel, Erik Knutzen, Tash Hepting, Gregory Hicks <i>NOTICE OF CHANGE OF ATTORNEY AFFILIATION</i> (Kathrein, Reed) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007	<u>168</u>	STIPULATION AND ORDER : Pursuant to the Stipulation of Dismissal filed by the parties, and good cause appearing, Bright House Networks LLC is hereby dismissed without prejudice from this action. Each party will bear its own costs and attorneys' fees. Signed by Chief Judge Vaughn R Walker on February 16, 2007. (cgk, COURT STAFF) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007	<u>169</u>	STIPULATION AND ORDER : Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties stipulate to the dismissal of defendant Bright House Networks, LLC without prejudice, in the action. Each party will bear its own costs and attorney's fees. Signed by Chief Judge Vaughn R Walker on 2/16/2007. (cgk, COURT STAFF) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007	<u>170</u>	STIPULATION AND ORDER : Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties stipulate to the dismissal of Defendant Charter Communications, LLC without prejudice in this action. Each party will bear its own costs and attorney's fees. Signed by Chief Judge Vaughn R Walker on 2/16/2007. (cgk, COURT STAFF) (Filed on 2/16/2007) (Entered: 02/16/2007)

02/20/2007	171	ORDER granting in part and denying in part motions to intervene and unseal. Doc ##133, 139, CV-06-672-VRW. Signed by Chief Judge Walker on 2/20/2007. (vrwlc2, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/20/2007)
02/20/2007	172	ORDER by Chief Judge Walker granting in part and denying in part 67 motion to stay. (vrwlc2, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/20/2007)
02/21/2007	173	TRANSFER ORDER. Signed by William Terrell Hodges, Chairman, Multidistrict Litigation on 2/21/2007. (gsa, COURT STAFF) (Filed on 2/21/2007) (Entered: 02/21/2007)
02/21/2007	174	TRANSCRIPT of Proceedings held on 2/9/2007 before Judge Vaughn R. Walker. Court Reporter: Connie Kuhl.. (gsa, COURT STAFF) (Filed on 2/21/2007) (Entered: 02/21/2007)
02/22/2007	175	NOTICE by Keith B. Alexander, George W. Bush, National Security Agency, United States of America, United States of America <i>Notice of Filing of Public Declaration of Lt. Gen. Keith B. Alexander</i> (Coppolino, Anthony) (Filed on 2/22/2007) (Entered: 02/22/2007)
02/22/2007	176	NOTICE by Keith B. Alexander(its Director), George W. Bush, National Security Agency, United States of America, United States Of America <i>Notice of Lodging of Classified Declaration of Lt. Gen. Keith B. Alexander</i> (Coppolino, Anthony) (Filed on 2/22/2007) (Entered: 02/22/2007)
02/22/2007	177	STIPULATION AND ORDER TO STAY CASES AGAINST CINGULAR et al., pending the final appellate ruling on this Court's 7/20/2006 ruling in Hepting et al v AT&T Corp et al. Signed by Chief Judge Vaughn R Walker on 2/22/2007. (cgk, COURT STAFF) (Filed on 2/22/2007) (Entered: 02/22/2007)
02/22/2007	178	ORDER re 166 Notice of Voluntary Dismissal filed by Electron Tubes, Inc. (C06-6433). Plaintiff, by counsel, pursuant to Rule 41 (a)(1) of the Federal Rules of Civil Procedure, hereby files this notice of dismissal without prejudice of Defendants Verizon Communications, Cellco Partnership and the National Security Agency. As there are no other active defendants in this case, this case is hereby dismissed. Signed by Chief Judge Vaughn R Walker on 2/22/2007. (cgk, COURT STAFF) (Filed on 2/22/2007) (Entered: 02/22/2007)
02/26/2007	179	CLERK'S NOTICE Advising Counsel of Receipt of the Case Center for Constitutional Rights, et al -v- Bush, et al from the Southern District of New York. (rcs, COURT STAFF) (Filed on 2/26/2007) (Entered: 02/26/2007)
02/28/2007	180	NOTICE of Voluntary Dismissal of <i>Comcast Telecommunications, Inc.</i> by All Plaintiffs (Attachments: # 1 Proposed Order)(Parrett, Vincent) (Filed on 2/28/2007) (Entered: 02/28/2007)
02/28/2007	181	NOTICE of Voluntary Dismissal of <i>Transworld Network Corp.</i> by All Plaintiffs (Attachments: # 1 Proposed Order)(Parrett, Vincent) (Filed on 2/28/2007) (Entered: 02/28/2007)
03/01/2007	182	CLERK'S NOTICE Advising Counsel of Receipt of the Case Robert Clayton, et al -v- AT&T Communications, et al from the Western District of Missouri. (rcs, COURT STAFF) (Filed on 3/1/2007) (Entered: 03/01/2007)
03/02/2007	183	CLERK'S NOTICE Advising Counsel of Receipt of cases from the Eastern

		District of Missouri and the District of Minnesota. (Attachments: #(1) U.S. -v- Gaw, et al; #(2) Roche -v- AT&T Corp) (rcs, COURT STAFF) (Filed on 3/2/2007) (Entered: 03/02/2007)
03/05/2007	184	ORDER Granting 180 Notice of Dismissal of Comcast Telecommunications, inc. filed by All Plaintiffs. Pursuant to FRCP 41(a)(1) defendant Comcast Telecommunications, Inc is hereby dismissed without prejudice. Signed by Chief Judge Vaughn R Walker on 3/5/2007. (cgk, COURT STAFF) (Filed on 3/5/2007) (Entered: 03/05/2007)
03/05/2007	185	ORDER Granting 181 Notice of Dismissal of Transworld Netowrk Corp. filed by All Plaintiffs. Pursuant to FRCP 41(a)(1) Defendant Transworld Network Corp is hereby dismissed without prejudice. Signed by Chief Judge Vaughn R Walker on 3/5/2007. (cgk, COURT STAFF) (Filed on 3/5/2007) (Entered: 03/05/2007)
03/07/2007	186	CLERK'S NOTICE Advising Counsel of Receipt of Cases from the the District of Maine, District of New Jersey, and the District of Connecticut. (Attachments: #(1) U.S. -v- Adams, et al; #(2) U.S. -v- Farber, et al; #(3) U.S. -v- Palermino, et al) (rcs, COURT STAFF) (Filed on 3/7/2007) (Entered: 03/07/2007)
03/08/2007	187	Letter Brief <i>Requesting Consideration of Pending Motions to Intervene</i> filed by Christopher Branson, David L. Cowie, James Douglas Cowie, Maureen Dea, Sally Dobres, John H. Donovan, Lisa Hicks, Maine Public Advocate, Thomas Mundhenk, Harold Noel, Gwethalyn M. Phillips, Paul Sarvis, Margaret Siegle, Lou Solebello, Ethan Strimling, Barbara Taylor, Kristen A. Tyson, Paul G. Tyson, James W. Woodworth. (Attachments: # 1 Proposed Order Proposed Order granting intervention of Cowie, et al., defendants# 2 Proposed Order Proposed order granting intervention of Maine Public Advocate)(Heiden, Zachary) (Filed on 3/8/2007) (Entered: 03/08/2007)
03/08/2007	188	STIPULATION and <i>[Proposed] Order Staying Cases Against AT&T Defendants</i> by AT&T Communications, AT&T Teleholdings, Illinois Bell, Indiana Bell, Pac Bell Telephone Co., SBC Communications, SBC Long Distance LLC, AT&T Corp., AT&T Operations, Inc., AT&T Communications of California, AT&T Inc.. (Axelbaum, Marc) (Filed on 3/8/2007) (Entered: 03/08/2007)
03/09/2007	189	Proposed order to 190 MOTION Scheduling Order filed by Robert Clayton, Steve Gaw, Steve Gaw, Robert M. Clayton, III. (Attachments: # 1 Proposed Order)(Whipple, Peggy) (Filed on 3/9/2007) Modified on 3/12/2007 (wv, COURT STAFF). (Entered: 03/09/2007)
03/09/2007	190	MOTION Scheduling Order filed by Robert Clayton, Steve Gaw, Steve Gaw, Robert M. Clayton, III. (Whipple, Peggy) (Filed on 3/9/2007) (Entered: 03/09/2007)
03/12/2007	191	CLERK'S NOTICE Advising Counsel of Receipt of the Action United Staes of America -v- James Volz, et al from the District of Vermont. (rcs, COURT STAFF) (Filed on 3/12/2007) (Entered: 03/12/2007)
03/12/2007	192	STIPULATION <i>Stipulation and [Proposed] Order to Extend Time for BellSouth Defendants to Respond to Consolidated Complaint</i> by BellSouth Telecommunications, Inc., BellSouth Communications Systems, LLC, BellSouth Corp.. (Ericson, Bruce) (Filed on 3/12/2007) (Entered: 03/12/2007)

03/12/2007	193	STIPULATION <i>and Proposed Order to Extend Deadlines in Shubert v. Bush, No. 07-693</i> by United States of America. (Tannenbaum, Andrew) (Filed on 3/12/2007) (Entered: 03/12/2007)
03/12/2007	194	MOTION for Extension of Time to File <i>Response to Complaints</i> filed by Keith B. Alexander, Federal Bureau of Investigation, Michael V. Hayden, Defense Intelligence Agency, Central Intelligence Agency, Department of Homeland Security, George W. Bush, National Security Agency, United States of America. (Attachments: # 1 Affidavit Declaration of Anthony J. Coppolino# 2 Proposed Order)(Coppolino, Anthony) (Filed on 3/12/2007) (Entered: 03/12/2007)
03/13/2007	195	NOTICE by United States of America of <i>Lodging of Classified Supplement in Support of United States' Administrative Motion to Change Time and for a Scheduling Order</i> (Tannenbaum, Andrew) (Filed on 3/13/2007) (Entered: 03/13/2007)
03/13/2007	196	ORDER setting briefing schedule for plaintiffs' motion for partial summary judgment in Al-Haramain Islamic Foundation, Inc, et al v Bush, et al, 07-109. Signed by Chief Judge Walker on 3/13/07. (vrwlc2, COURT STAFF) (Filed on 3/13/2007) (Entered: 03/13/2007)
03/13/2007	197	STATUS REPORT <i>MDL Status Report</i> by BellSouth Corporation, AT&T Corp.. (Attachments: *** # 1 Exhibit A FILED IN ERROR. PLEASE SEE DOCKET #200. *** # 2 Exhibit B# 3 Exhibit C)(Axelbaum, Marc) (Filed on 3/13/2007) Modified on 3/15/2007 (ewn, COURT STAFF). (Entered: 03/13/2007)
03/14/2007	198	Memorandum in Opposition re 190 MOTION Scheduling Order filed byUnited States of America, United States of America. (Attachments: # 1 Exhibit Exh A -- Proposed Schedule# 2 Proposed Order Proposed Order)(Haas, Alexander) (Filed on 3/14/2007) (Entered: 03/14/2007)
03/14/2007	199	STIPULATION AND ORDER STAYING ALL CASES (EXCEPT HEPTING) AGAINST AT&T DEFENDANTS. This order will apply to the following cases: C06-3467(Roe), C06-3596(Campbell), C06-5065(Mahoney), C06-5067(Souder), C06-5268(Trevino), C06-5269(Dolberg), C06-5340(Terkel), C06-5343(Herron), C06-5452(Harrington), C06-5485(Joll), C06-5576(Conner), C06-6222(Cross), C06-6224(Cross), C06-6294(Waxman), C06-6385(Fortnash), C06-6387 (Dubois), C06-6570(Chulsky), C06-6924(Hardy), C06-7934(Mink), C07-1234 (Roche), and Mayer v Verizon Communications Inc et al. This stay does not affect any claims in any of the referenced cases against non-AT&T Defendants, nor any cases in which the United States is a plaintiff, nor in C07-1187 (Clayton v AT&T Communications of the Southwest, Inc). Signed by Chief Judge Vaughn R Walker on 3/14/2007. (cgk, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/14/2007)
03/14/2007	200	EXHIBITS re 197 Status Report (<i>EXHIBIT A ONLY</i>) filed byBellSouth Corporation, AT&T Corp.. (Related document(s) 197) (Axelbaum, Marc) (Filed on 3/14/2007) (Entered: 03/14/2007)
03/14/2007	203	NOTICE of Appearance - Robert J. Benson - Qwest Communications International, Inc. (gsa, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/19/2007)
03/14/2007	204	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210, receipt number

		34611004097.) filed by Qwest Communications International, Inc.. (gsa, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/19/2007)
03/14/2007	205	MOTION for leave to appear in Pro Hac Vice - Christopher R. Zaetta(Filing fee \$ 210, receipt number 34611004097.) filed by Qwest Communications International, Inc.. (gsa, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/19/2007)
03/14/2007	206	MOTION for leave to appear in Pro Hac Vice - Ty Cobb (Filing fee \$ 210, receipt number 3461100409.) filed by Qwest Communications International, Inc.. (gsa, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/19/2007)
03/14/2007	207	CERTIFICATE OF SERVICE by Qwest Communications International, Inc. re Proposed Order, [205] MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210, receipt number 3461100409.), [203] Notice of Appearance, Proposed Order, [206] MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210, receipt number 3461100409.), [204] MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210, receipt number 3461100409.), Proposed Order (gsa, COURT STAFF) (Filed on 3/14/2007) (Entered: 03/19/2007)
03/15/2007	201	Memorandum in Opposition to <i>US Administrative Motion</i> filed byTash Hepting. (Attachments: # 1 Affidavit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Proposed Order)(Cohn, Cindy) (Filed on 3/15/2007) (Entered: 03/15/2007)
03/15/2007	202	Joinder in the <i>Administrative Motion of the United States for a Scheduling Order</i> by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Wireless Services, Inc., Verizon Wireless LLC, Verizon Maryland, Inc., Cellco Partnership, MCI, LLC. (Rogovin, John) (Filed on 3/15/2007) (Entered: 03/15/2007)
03/19/2007	208	MOTION for Leave to File Excess Pages filed by Verizon Wireless, LLC, Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., Cellco Partnership. (Attachments: # 1 Proposed Order # 2 Affidavit of John A. Rogovin in Support of Motion)(Rogovin, John) (Filed on 3/19/2007) (Entered: 03/19/2007)
03/20/2007	209	STIPULATION AND ORDER TO EXTEND TIME FOR BELL SOUTH DEFENDANTS TO RESPOND TO CONSOLIDATED COMPLAINT. It is hereby Ordered that the BellSouth Defendants shall have until May 29, 2007 to answer or otherwise respond to the BellSouth Consolidated Complaint, or shall have 28 days after the Court's decision on any motion to dismiss the Master Consolidated Complaint against MCI Defendants and Verizon Defendants brought by any defendant named by docket #125 (Master Consolidated Complaint). This order shall apply to the following cases: C06-5343 (Herron); C06-5485 (Joll); C06-5576 (Conner); C06-6253 (Derosier); C07-0464 (Lebow) and Mayer v Verizon Communications Inc (06-3650 S.D.N.Y). Signed by Chief Judge Vaughn R Walker on 3/20/2007. (cgk, COURT STAFF) (Filed on 3/20/2007) (Entered: 03/20/2007)
03/20/2007	210	IT IS SO ORDERED AS MODIFIED TO EXTEND DEADLINES FOR MOTION TO DISMISS AND RELATED BRIEFING IN SHUBERT v. BUSH (C07-0693). Pursuant to the stipulation: On or before 5/18/2007, the Government may file a dispositive motion and any assertion of the military and

		state secrets privilege in Shubert v. Bush, Case C07-0693; on or before 6/29/2007, Plaintiffs in Shubert may file an opposition to the dispositive motion; on or before 7/20/2007, the Government may file their reply brief in support of its dispositive motion. Oral argument on the dispositive motion has been set for 8/16/2007 at 2:00 PM. Signed by Chief Judge Vaughn R Walker on 3/20/2007. (cgk, COURT STAFF) (Filed on 3/20/2007) (Entered: 03/20/2007)
03/21/2007	211	Memorandum in Opposition re 208 MOTION for Leave to File Excess Pages filed byElaine Spielfogel-Landis. (Himmelstein, Barry) (Filed on 3/21/2007) (Entered: 03/21/2007)
03/21/2007	214	ORDER by Chief Judge Vaughn R Walker granting [204] Application for Admission Pro Hac Vice of Christine Varney. (cgk, COURT STAFF) (Filed on 3/21/2007) (Entered: 03/22/2007)
03/21/2007	215	ORDER by Chief Judge Vaughn R Walker granting [205] Application for Admission Pro Hac Vice of Christopher R. Zaetta. (cgk, COURT STAFF) (Filed on 3/21/2007) (Entered: 03/22/2007)
03/21/2007	216	ORDER by Chief Judge Vaughn R Walker granting [206] Application for Admission Pro Hac Vice of Ty Cobb. (cgk, COURT STAFF) (Filed on 3/21/2007) (Entered: 03/22/2007)
03/22/2007	212	Reply to Opposition re 208 MOTION for Leave to File Excess Pages filed byVerizon Wireless, LLC, Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., Cellco Partnership. (Rogovin, John) (Filed on 3/22/2007) (Entered: 03/22/2007)
03/22/2007	213	NOTICE by Richard D. Suchanek, III <i>of Change of Address and Firm Name for Alexander Barnett and Change of Firm Name for Gary E. Mason</i> (Barnett, Alexander) (Filed on 3/22/2007) (Entered: 03/22/2007)
03/22/2007	217	ORDER by Chief Judge Walker granting 194 motion for extension of time to file. (vrwlc2, COURT STAFF) (Filed on 3/22/2007) (Entered: 03/22/2007)
03/26/2007	218	MOTION Administrative Motion for an Interim Stay of Briefing Pending the Court of Appeals' Consideration of Defendants' Stay Motion filed by United States of America. (Attachments: # 1 Exhibit 1 (Government's Motion to Ninth Circuit for Stay Pending Appeal)# 2 Declaration of Andrew H. Tannenbaum in Support of Defendants' Administrative Motion for an Interim Stay# 3 Proposed Order)(Tannenbaum, Andrew) (Filed on 3/26/2007) (Entered: 03/26/2007)
03/26/2007	219	ORDER by Chief Judge Walker regarding 190 motion for scheduling order (vrwlc2, COURT STAFF) (Filed on 3/26/2007) (Entered: 03/26/2007)
03/28/2007	220	Reply Memorandum <i>Plaintiffs' Response to Defendants' Administrative Motion Pursuant to Civil Local Rule 7-11 for an Interim Stay of Briefing Pending the Court of Appeals' Consideration of Defendants' Stay Motion</i> filed byAl-Haramain Islamic Foundation, Inc., Wendell Belew, Asim Ghafoor. (Attachments: # 1 Exhibit A)(Eisenberg, Jon) (Filed on 3/28/2007) (Entered: 03/28/2007)
03/28/2007	221	STIPULATION and <i>[Proposed] Order to Extend Time for AT&T and Cingular Defendants to Respond to Complaints</i> by AT&T Communications, AT&T Teleholdings, Cingular Wireless Corporation, Cingular Wireless LLC, Illinois

		Bell, Indiana Bell, Pac Bell Telephone Co., SBC Communications, SBC Long Distance LLC, AT&T Corp., AT&T Operations, Inc., New Cingular Wireless Services, Inc., AT&T Communications of California, AT&T Inc.. (Axelbaum, Marc) (Filed on 3/28/2007) (Entered: 03/28/2007)
03/29/2007	222	STIPULATION AND <i>[PROPOSED]</i> ORDER RE MOTION TO DISMISS IN CLAYTON V. AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., ET AL. by AT&T Communications of the Southwest, Inc.(a Delaware corporation), Southwestern Bell Telephone, L.P.(a Texas limited partnership), SBC Long Distance LLC, SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc., TCG Kansas City, Inc.. (Attachments: # 1 Exhibit A)(Axelbaum, Marc) (Filed on 3/29/2007) (Entered: 03/29/2007)
03/30/2007	223	NOTICE of Voluntary Dismissal of <i>Verizon Wireless and Verizon Internet Entities</i> by All Plaintiffs (Attachments: # 1 Proposed Order)(Parrett, Vincent) (Filed on 3/30/2007) (Entered: 03/30/2007)
03/30/2007	224	STIPULATION AND ORDER TO EXTEND TIME FOR AT&T AND CINGULAR DEFENDANTS TO RESPOND TO COMPLAINTS. This document relates to C07-1324 (US v Rabner), C07-1326 (US v Palermino) and C07-1396 (US v Volz): The AT&T and Cingular Defendants need not answer or otherwise respond to the complaints until 60 days after this court issues an order resolving the dispositive motions set for hearing by the court's Order of 3/26/2007. Signed by Chief Judge Vaughn R Walker on 3/30/2007. (cgk, COURT STAFF) (Filed on 3/30/2007) (Entered: 03/30/2007)
03/30/2007	225	STIPULATION AND ORDER AS MODIFIED RE MOTION TO DISMISS IN CLAYTON v AT&T COMMUNICATIONS OF THE SOUTHWEST, INC : This order relates to C07-1187 (Clayton): Defendants in Clayton v. AT&T Communications of the Southwest Inc shall file its motion to dismiss the complaint by 4/9/2007. Plaintiffs shall file an opposition by 5/1/2007. Defendants may file a reply by 5/25/2007. The motion shall be heard on 6/14/2007 at 2:00 PM, the same day set for hearing the dispositive motions in the state cases. Signed by Judge Vaughn R Walker on 3/30/2007. (cgk, COURT STAFF) (Filed on 3/30/2007) (Entered: 03/30/2007)
04/02/2007	226	NOTICE by Tash Hepting <i>NOTICE OF CHANGE OF ATTORNEY AFFILIATION</i> (Kathrein, Reed) (Filed on 4/2/2007) (Entered: 04/02/2007)
04/04/2007	227	NOTICE by United States of America of <i>Order by Court of Appeals Granting the Government's Motion for a Stay Pending Appeal in Al-Haramain v. Bush</i> (Attachments: # 1 April 4, 2007 Order of the United States Court of Appeals for the Ninth Circuit)(Tannenbaum, Andrew) (Filed on 4/4/2007) (Entered: 04/04/2007)
04/05/2007	228	Reply to Opposition to <i>ACLU-CT's Motion for Partial Summary Judgment</i> filed by American Civil Liberties Union of CT. (Boulton, Wayne) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	229	Reply to Opposition <i>CT-OCC's Motion for Partial Summary Judgment</i> filed by Office of Consumer Counsel-CT. (Attachments: # 1 Exhibit CT-DPUC Draft Decision 030707)(Vallee, William) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	230	ORDER GRANTING 223 Notice of Voluntary Dismissal filed by All Plaintiffs. This document to all actions brought against MCI Defendants and Verizon

		Defendants. Plaintiffs, by counsel, pursuant to FRCP Rule 41(a)(1), hereby voluntarily dismisses without prejudice defendants Cellco Partnership dba Verizon Wireless, NYNEX Corp, GTE Wireless Inc, GTE Wireless of the South Inc, NYNEX PCS Inc, Verizon Wireless of the East LP, Verizon Internet Services Inc, Bell Atlantic Entertainment and Information Services Group, Verizon Internet Solutions Inc, Verizon Technology Corp and Verizon Advanced Data Inc.. Signed by Chief Judge Vaughn R Walker on 4/5/2007. (cgk, COURT STAFF) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	231	Reply Memorandum <i>in support of summary judgment (US v. Palermino)</i> filed by United States of America. (Haas, Alexander) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	232	Reply Memorandum <i>in support of summary judgment (US v. Volz)</i> filed by United States of America. (Haas, Alexander) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	233	Reply Memorandum <i>in Support of Motion to Dismiss</i> filed by James Volz, David C. Coen, John D. Burke, David O'Brien. (Donofrio, Michael) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/05/2007	234	NOTICE of Substitution of Counsel by Michael Nicholas Donofrio (Donofrio, Michael) (Filed on 4/5/2007) (Entered: 04/05/2007)
04/06/2007	235	NOTICE of Voluntary Dismissal of <i>Embarq Corporation</i> by Richard D. Suchanek, III (Mason, Gary) (Filed on 4/6/2007) (Entered: 04/06/2007)
04/09/2007	236	MOTION for leave to appear in Pro Hac Vice <i>by William P. Barr</i> (Filing fee \$ 210.) filed by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., MCI, LLC. (Boynton, Brian) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/09/2007	237	MOTION for leave to appear in Pro Hac Vice <i>by Randal S. Milch</i> (Filing fee \$ 210.) filed by Verizon Communications Inc, Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., MCI, LLC. (Boynton, Brian) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/09/2007	238	NOTICE of Appearance by Brian Matthew Boynton <i>for William P. Barr, Randal S. Milch, Henry Weissmann, Susan Szabo, and Aimee Feinberg</i> (Boynton, Brian) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/09/2007	239	NOTICE by United States of America <i>of Lodging of Classified Submission</i> (Tannenbaum, Andrew) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/09/2007	240	MOTION to Dismiss filed by AT&T Communications of the Southwest, Inc.(a Delaware corporation), Southwestern Bell Telephone, L.P.(a Texas limited partnership), SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc., TCG Kansas City, Inc., SBC Long Distance, LLC(a Delaware limited liability company doing business as AT&T Long Distance). Motion Hearing set for 6/14/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Axelbaum, Marc) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/09/2007	241	Proposed Order re 240 MOTION to Dismiss by AT&T Communications of the

		Southwest, Inc.(a Delaware corporation), Southwestern Bell Telephone, L.P.(a Texas limited partnership), SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc., TCG Kansas City, Inc., SBC Long Distance, LLC(a Delaware limited liability company doing business as AT&T Long Distance). (Axelbaum, Marc) (Filed on 4/9/2007) (Entered: 04/09/2007)
04/10/2007	242	STIPULATION re 208 MOTION for Leave to File Excess Pages by Verizon Communications Inc, Verizon Northwest, Inc., MCI Communications Services, Inc.. (Rogovin, John) (Filed on 4/10/2007) (Entered: 04/10/2007)
04/11/2007	243	CLERK'S NOTICE Advising Counsel of Receipt of the Case Anderson, et al -v- Verizon Communications Inc., et al from the Southern District of New York. (rcs, COURT STAFF) (Filed on 4/11/2007) (Entered: 04/11/2007)
04/13/2007	244	STIPULATION by Qwest Communications International, Inc.. (Attachments: # 1 Proposed Order To Extend Time For Defendant Qwest Communications to Respond to Complaint# 2 Affidavit Certificate of Service of Stipulation and [Proposed] Order to Extend Time for Qwest to Respond to Complaint)(Benson, Robert) (Filed on 4/13/2007) (Entered: 04/13/2007)
04/13/2007	245	STIPULATION AND ORDER GRANTING PAGE LIMITS FOR BRIEFING VERIZON'S MOTION TO DISMISS PLAINTIFFS' MASTER CONSOLIDATED COMPLAINT. Verizon shall be permitted to file a brief not to exceed 50 pages in support of its motion to dismiss master complaint. The Verizon and MCI Plaintiffs shall be permitted to file a brief not to exceed 50 pages in opposition to Verizon's motion to dismiss master complaint. Verizon shall be permitted to file a reply brief not to exceed 30 pages. Signed by Chief Judge Vaughn R Walker on 4/13/2007. (cgk, COURT STAFF) (Filed on 4/13/2007) (Entered: 04/13/2007)
04/13/2007	246	Letter from Attorneys for Plaintiffs Requesting Administrative Relief. (Attachments: # 1 Proposed Order Re Government Ex Parte, In Camera Filings) (Cohn, Cindy) (Filed on 4/13/2007) (Entered: 04/13/2007)
04/17/2007	247	Conditional Transfer ORDER (CTO-6) - Howard Jacobs, et al. v AT&T Corop., et al., S.D. Florida, C.A. No. 0:07-60365 signed by Jeffery N. Luthi, Clerk of the Panel (gsa, COURT STAFF) (Filed on 4/17/2007) Additional attachment(s) added on 4/18/2007 (gsa, COURT STAFF). (Entered: 04/18/2007)
04/18/2007	248	STIPULATION AND ORDER re 244 filed by Qwest Communications International, Inc. Defendant QWest Communications International Inc need not answer or otherwise respond to the complaint in United States v Rabner Case No. 07-1324 until sixty days after this Court issues an order resolving the dispositive motions set for hearing by the Order of 3/26/2007. Signed by Chief Judge Vaughn R Walker on 4/18/2007. (cgk, COURT STAFF) (Filed on 4/18/2007) (Entered: 04/19/2007)
04/19/2007	249	STIPULATION re 246 Letter <i>Setting Schedule for United States to Respond to Plaintiffs' Filing</i> by United States, George W. Bush, National Security Agency, United States Of America. (Haas, Alexander) (Filed on 4/19/2007) (Entered: 04/19/2007)
04/20/2007	250	Letter from John M.R. Paterson. (Paterson, John) (Filed on 4/20/2007) (Entered: 04/20/2007)

04/20/2007	251	STIPULATION <i>Permitting the United States to Intervene</i> by United States Of America. (Haas, Alexander) (Filed on 4/20/2007) (Entered: 04/20/2007)
04/20/2007	252	MOTION to Intervene in <i>Bready (MDL 06-6313)</i> filed by United States Of America. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Proposed Order Proposed Order)(Haas, Alexander) (Filed on 4/20/2007) (Entered: 04/20/2007)
04/20/2007	253	MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> filed by United States Of America. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Coppolino, Anthony) (Filed on 4/20/2007) (Entered: 04/20/2007)
04/20/2007	254	MEMORANDUM in Support of 253 <i>Motion to Dismiss or, in the Alternative, for Summary Judgment</i> filed by United States Of America. (Attachments: # 1 Brief Part 2# 2 Declaration of the Director of National Intelligence# 3 Declaration of the Director of the National Security Agency)(Coppolino, Anthony) (Filed on 4/20/2007) Modified on 4/24/2007 (gsa, COURT STAFF). (Entered: 04/21/2007)
04/21/2007	255	NOTICE by United States of America of <i>Lodging of Classified Brief</i> (Coppolino, Anthony) (Filed on 4/21/2007) (Entered: 04/21/2007)
04/21/2007	256	NOTICE by United States of America of <i>Lodging of Classified Declaration of the Director of National Intelligence</i> (Coppolino, Anthony) (Filed on 4/21/2007) (Entered: 04/21/2007)
04/21/2007	257	NOTICE by United States of America of <i>Lodging of Classified Declaration of the Director of the National Security Agency</i> (Coppolino, Anthony) (Filed on 4/21/2007) (Entered: 04/21/2007)
04/21/2007	258	MOTION for Leave to File Excess Pages filed by United States of America. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Coppolino, Anthony) (Filed on 4/21/2007) (Entered: 04/21/2007)
04/23/2007	259	ORDER by Chief Judge Vaughn R Walker granting 236 Motion for Admission Pro Hac Vice of William P Barr. (cgk, COURT STAFF) (Filed on 4/23/2007) (Entered: 04/23/2007)
04/23/2007	260	ORDER by Chief Judge Vaughn R Walker granting 237 Motion for Admission Pro Hac Vice of Randal S Milch. (cgk, COURT STAFF) (Filed on 4/23/2007) (Entered: 04/23/2007)
04/25/2007	261	STIPULATION AND ORDER re 251 filed by United States Of America. Having considered the parties stipulation to permit intervention by the United States pursuant to Federal Rule of Civil Procedure 24, the United States is allowed to intervene in the actions covered by the stipulation as a defendant. Signed by Chief Judge Vaughn R Walker on 4/24/2007. (cgk, COURT STAFF) (Filed on 4/25/2007) (Entered: 04/25/2007)
04/25/2007	262	Proposed Order <i>Stipulation and [Proposed] Order Regarding New Cases Against AT&T Defendants</i> by AT&T Corp.. (Axelbaum, Marc) (Filed on 4/25/2007) (Entered: 04/25/2007)
04/26/2007	263	Brief <i>State Officials' Consolidated Brief of Ninth Circuit Law In Further Support</i>

		<i>of Pending Dispositive Motions</i> filed by Robert Clayton, Steve Gaw, Steve Gaw, Robert M. Clayton, III. (Whipple, Peggy) (Filed on 4/26/2007) (Entered: 04/26/2007)
04/26/2007	264	NOTICE by United States of America re 240 MOTION to Dismiss <i>of Filing of Statement of Interest in support of motion to dismiss</i> (Haas, Alexander) (Filed on 4/26/2007) (Entered: 04/26/2007)
04/26/2007	265	Brief re 219 Order on Motion for Miscellaneous Relief <i>Supplemental Brief of the United States Regarding the State Cases</i> filed by United States of America. (Attachments: # 1 Affidavit Exh A - Declaration of Lt. Gen. Alexander)(Related document(s) 219) (Haas, Alexander) (Filed on 4/26/2007) (Entered: 04/26/2007)
04/27/2007	266	NOTICE of Appearance by Rupa Bhattacharyya (Bhattacharyya, Rupa) (Filed on 4/27/2007) (Entered: 04/27/2007)
04/27/2007	267	Memorandum in Opposition to <i>Plaintiffs' Letter of April 13, 2007 (Docket No. 246)</i> filed by United States of America. (Attachments: # 1 Proposed Order) (Bhattacharyya, Rupa) (Filed on 4/27/2007) (Entered: 04/27/2007)
04/30/2007	268	MOTION to Dismiss for Lack of Jurisdiction (<i>Personal</i>) filed by Verizon Communications Inc, Verizon Global Networks, Inc., MCI, LLC. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	269	MEMORANDUM in Support re 268 MOTION to Dismiss for Lack of Jurisdiction (<i>Personal</i>) filed by Verizon Communications Inc, Verizon Global Networks, Inc., MCI, LLC. (Attachments: # 1 Declaration of Joseph P. Dunbar) (Related document(s) 268) (Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	270	MOTION to Dismiss <i>the Chulsky, Riordan, and Bready Complaints</i> filed by Verizon Communications Inc, Verizon Maryland, Inc.. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	271	MEMORANDUM in Support re 270 MOTION to Dismiss <i>the Chulsky, Riordan, and Bready Complaints</i> filed by Verizon Communications Inc, Verizon Maryland, Inc.. (Attachments: # 1 Exhibit 1)(Related document(s) 270) (Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	272	Request for Judicial Notice <i>in Support of Verizon's Motion To Dismiss Plaintiffs' Master Consolidated Complaint</i> filed by Verizon Communications Inc, Verizon Northwest, Inc., MCI Communications Services, Inc.. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3)(Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	273	MOTION to Dismiss <i>Plaintiffs' Master Consolidated Complaint</i> filed by Verizon Communications Inc, Verizon Northwest, Inc., MCI Communications Services, Inc.. Motion Hearing set for 6/21/2007 02:00 PM in Courtroom 6, 17th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	274	MEMORANDUM in Support re 273 MOTION to Dismiss <i>Plaintiffs' Master</i>

		<i>Consolidated Complaint</i> filed by Verizon Communications Inc, Verizon Northwest, Inc., MCI Communications Services, Inc.. (Related document(s) 273) (Rogovin, John) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	276	ORDER of USCA - The court has reviewed the motion for reconsideration and responses thereto, including the opposition to consolidation filed by the non-party plaintiff's appellees in Hepting v. AT&T. appeals No, 06-17132. 06-17137. The motion for reconsideration seeking to lift the stay of appellate proceedings is granted. Appellants' April 20, 2007 motion for leave to file an opposition to appellees' proposed briefing scheduled in appeal No. 06-36083 is granted. Appellants' opposition has been filed. The Clerk shall consolidate and calendar this appeal with the appeals Hepting v. AT&T Corp. appeal No. 06-17132, and Hepting v. United States appeal No. 06-17137. The briefing schedule in appeal Nos. 06-17132 and 06-17137 remains as previously established. The following briefing schedule shall be set for appeal No. 06-36083; the opening brief and excerpts or record are due June 6, 2007, the answering brief is due July 6, 2007; and the optional reply brief is due within 14 days after service of the answering brief. The provisions of Ninth Circuit Rule 31-2.2(a) shall not be applicable to appeal No. 06-36083; any Rule 31-2.2(b) request is strongly disfavored. The Clerk shall calendar these consolidated appeals during the week of August 13-17, 2007, in San Francisco, California. No motions for reconsideration, modification or clarification of this order shall be filed or entertained. (gsa, COURT STAFF) (Filed on 4/30/2007) (Entered: 05/01/2007)
05/01/2007	275	Memorandum in Opposition <i>Missouri State Officials' Brief of Points and Authorities in Opposition to 240 AT&T's Motion to Dismiss</i> filed by Robert Clayton, Steve Gaw. (Attachments: # 1 Affidavit)(Whipple, Peggy) (Filed on 5/1/2007) (Entered: 05/01/2007)
05/01/2007	277	STIPULATION re 219 Order on Motion for Miscellaneous Relief <i>to Clarify Response Date</i> by United States of America. (Haas, Alexander) (Filed on 5/1/2007) (Entered: 05/01/2007)
05/01/2007	279	MOTION for leave to appear in Pro Hac Vice; proposed order (Filing fee \$ 210, receipt number 3461100583.) filed by Verizon Global Networks, Inc., Verizon Northwest, Inc., MCI Communications Services, Inc., Verizon Maryland, Inc., MCI, LLC. (gsa, COURT STAFF) (Filed on 5/1/2007) Modified on 5/2/2007 (gsa, COURT STAFF). (Entered: 05/02/2007)
05/02/2007	278	ERRATA <i>Table of Authorities - Errata</i> by Robert Clayton, Steve Gaw, Steve Gaw, Robert M. Clayton, III. (Whipple, Peggy) (Filed on 5/2/2007) (Entered: 05/02/2007)
05/04/2007	280	STIPULATION AND ORDER re 277 by United States of America. The United States and State Officials shall e-file their responses to the opposing side's consolidated brief no later than 5/25/2007. Signed by Chief Judge Vaughn R Walker on 5/4/2007. (cgk, COURT STAFF) (Filed on 5/4/2007) (Entered: 05/04/2007)
05/04/2007	281	STIPULATION AND ORDER REGARDING NEW CASES AGAINST AT&T DEFENDANTS re 262 filed by AT&T Corp. Signed by Chief Judge Vaughn R Walker on 5/4/2007. (cgk, COURT STAFF) (Filed on 5/4/2007) (Entered: 05/04/2007)

05/04/2007	282	ORDER by Judge Vaughn R Walker granting [279] Motion for Admission Pro Hac Vice of Attorney Catherine M.A. Carroll. (cgg, COURT STAFF) (Filed on 5/4/2007) (Entered: 05/04/2007)
05/09/2007	283	STIPULATION and Proposed Order to Extend Briefing and Hearing Schedule in Shubert v. Bush, Case. No. 07-00693, filed by Government Defendants in their official capacity by Keith B. Alexander, Michael V. Hayden, Alberto Gonzales, George W. Bush. (Coppolino, Anthony) (Filed on 5/9/2007) (Entered: 05/09/2007)
05/11/2007	284	AMENDED COMPLAINT Class Action and Demand for Jury Trial against Keith B. Alexander, Michael V. Hayden, Alberto Gonzales, George W. Bush, Mark Baker, United States Of America. Filed by Virginia Shubert, Noha Arafa, Sarah Dranoff, Hilary Botein, Trudy Bond. (Maazel, Ilann) (Filed on 5/11/2007) (Entered: 05/11/2007)

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CERTIFICATE OF SERVICE

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