

~~TOP SECRET//COMINT-[REDACTED]//TSP//LICS//ORCON//NOFORN//MR~~

1 MICHAEL F. HERTZ
 2 Acting Assistant Attorney General
 3 DOUGLAS N. LETTER
 4 Terrorism Litigation Counsel
 5 JOSEPH H. HUNT
 6 Director, Federal Programs Branch
 7 VINCENT M. GARVEY
 8 Deputy Branch Director
 9 ANTHONY J. COPPOLINO
 10 Special Litigation Counsel
 11 U.S. Department of Justice
 12 Civil Division, Federal Programs Branch
 13 20 Massachusetts Avenue, NW
 14 Washington, D.C. 20001
 15 Phone: (202) 514-4782
 16 Fax: (202) 616-8460

*Attorneys for the United States and
Government Defendants Sued in their
Official Capacities*

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 CAROLYN JEWEL, *et al.*

18 Plaintiffs,

19 v.

20 NATIONAL SECURITY AGENCY, *et al.*

21 Defendants

) No. 08-cv-4873-VRW

)
) **CLASSIFIED DECLARATION**
) **OF DENNIS C. BLAIR**
) **DIRECTOR OF NATIONAL**
) **INTELLIGENCE**

)
) **EX PARTE, IN CAMERA**
) **SUBMISSION**

)
) Date: June 25, 2009
) Time: 2:30 p.m.
) Courtroom: 6, 17th Floor

) Chief Judge Vaughn R. Walker

~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON//NOFORN//MR~~

1 I, Dennis C. Blair, do hereby state and declare as follows:

2 ~~(U)~~ INTRODUCTION

3
4 1. ~~(U)~~ I am the Director of National Intelligence (DNI) of the United States. I have
5 held this position since January 29, 2009. In 2002, I retired as an Admiral from the United
6 States Navy after a 34-year naval career, which included my service as Commander-in-Chief of
7 the U.S. Pacific Command. During my naval career, I also served as Director of the Joint Staff
8 and as Associate Director of Central Intelligence for Military Support, as well as in policy
9 positions on the National Security Council staff. From 2003 to 2006, I was President and CEO
10 of the Institute for Defense Analyses, an organization that analyzes and makes recommendations
11 on national security policy matters.

12
13 2. ~~(U)~~ The purpose of this declaration is to formally assert, in my capacity as the
14 Director of National Intelligence and head of the United States Intelligence Community, the
15 military and state secrets privilege (hereafter "state secrets privilege") and a statutory privilege
16 under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence
17 sources and methods that are at risk of disclosure in this case. The statements made herein are
18 based on my personal knowledge as well as on information provided to me in my official
19 capacity as the Director of National Intelligence.

20
21 ~~(U)~~ SUMMARY

22
23 3. ~~(U)~~ In the course of my official duties, I have been advised of this lawsuit and the
24 allegations at issue in the plaintiffs' Complaint. In personally considering this matter, I have
25 executed a separate unclassified declaration dated April 3, 2009. Moreover, I have read and
26 personally considered the information contained in the Public and *In Camera, Ex Parte*
27 Declaration of Deborah A. Bonanni, Chief of Staff, National Security Agency, executed on April
28

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON//NOFORN//MR~~

1 ~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~
 2 3, 2009 (hereafter "Classified NSA Declaration"). Disclosure of the information covered by this
 3 privilege assertion reasonably could be expected to cause exceptionally grave damage to the
 4 national security of the United States and, therefore, the information should be excluded from
 5 any use in this case. In addition, it is my judgment that sensitive state secrets are so central to the
 6 subject matter of the litigation that any attempt to proceed in the case will substantially risk the
 7 disclosure of the classified privileged national security information described herein and will
 8 therefore risk exceptionally grave damage to the national security of the United States.

9 4. ~~(TS//SI [REDACTED] //TSP//OC/NF)~~ As the NSA states, *see* Classified NSA Decl.
 10 ¶¶ 4-7, the allegations in this lawsuit put at risk of disclosure information concerning several
 11 highly classified and critically important NSA intelligence activities that commenced after the
 12 9/11 terrorist attacks, but which are now conducted pursuant to authority of the Foreign
 13 Intelligence Surveillance Act ("FISA"), including ongoing activities conducted under orders
 14 approved by the Foreign Intelligence Surveillance Court ("FISC"). Specifically, in order to
 15 address plaintiffs' allegation that the NSA, with the assistance of telecommunication companies
 16 including AT&T, has indiscriminately intercepted the content and obtained the communications
 17 records of millions of ordinary Americans as part of an alleged presidentially authorized
 18 "Program" after 9/11, *see, e.g.*, Complaint at ¶¶ 2-13; 39-97, further litigation risks the disclosure
 19 of information concerning several classified NSA intelligence activities, sources and methods,
 20
 21
 22

23 [REDACTED]
 24 [REDACTED] in connection with NSA's (1) targeted content surveillance aimed at al-Qaeda and
 25 affiliated terrorist organizations, pursuant to the Terrorist Surveillance Program ("TSP") [REDACTED]
 26 [REDACTED] (2) the bulk collection and targeted analysis of non-content
 27 information about telephone and Internet communications—critically important and highly
 28

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] /TSP//ICS//ORCON//NOFORN//MR~~
 1 sensitive activities that are also now conducted pursuant to FISC orders and that enable the NSA
 2 to uncover the contacts [REDACTED]

3 [REDACTED]; and (3) [REDACTED]
 4 [REDACTED]

5 [REDACTED] This lawsuit
 6 therefore puts at risk of disclosure information concerning essential foreign intelligence-
 7 gathering activities utilized to meet the extremely serious threat of another terrorist attack on the
 8 U.S. Homeland [REDACTED] (a threat which I describe further below based
 9 on recent assessments of the National Counterterrorism Center (NCTC) prepared in January
 10 2009 and March 2009.)
 11

12
 13 5. ~~(TS//SI [REDACTED] /TSP//OC/NF)~~ Accordingly, as set forth further below, I am
 14 asserting the state secrets privilege and the DNI's authority to protect intelligence sources and
 15 methods pursuant to 50 U.S.C. § 403-1(i)(1) to protect against the disclosure of the highly
 16 classified intelligence sources and methods put at issue in this case and vital to the national
 17 security of the United States, including: (1) any information that would tend to confirm or deny
 18 whether particular individuals, including the named plaintiffs, have been subject to the alleged
 19 NSA intelligence activities; (2) information concerning NSA intelligence sources and methods,
 20 including facts demonstrating that the content collection under the TSP was limited to specific
 21 al-Qaeda and associated terrorist-related international communications and was not a content
 22 surveillance dragnet as plaintiffs allege; (3) facts that would tend to confirm or deny the
 23 existence of the NSA's bulk non-content (i.e., meta data) collection and use, and any information
 24 about those activities; and (4) [REDACTED]
 25

26 [REDACTED]
 27 [REDACTED] I specifically concur with the NSA that
 28

~~TOP SECRET//COMINT [REDACTED] /TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT- [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~
 1 public speculation about alleged NSA activities does not diminish the need to protect intelligence
 2 sources and methods from further exposure, and that official confirmation and disclosure of the
 3 classified privileged national security information described herein would cause exceptionally
 4 grave damage to the national security. For these reasons, as set forth further below, I request that
 5 the Court uphold the state secrets and statutory privilege assertions that I am make herein, as
 6 well as the statutory privilege assertion made by the NSA pursuant to Section 6 of the National
 7 Security Agency Act, see 50 U.S.C. § 402 (note), and protect the information described in this
 8 declaration from disclosure.
 9

10 ~~(S)~~ CLASSIFICATION OF DECLARATION

11 6. ~~(S)~~ Pursuant to the standards in Executive Order No. 12958, as amended by
 12 Executive Order No. 13292, this declaration is classified as: ~~TOP SECRET//COMINT- [REDACTED]~~
 13 ~~[REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~. The details concerning these classification
 14 markings are set forth in the Classified NSA Declaration at ¶ 8-11 and are briefly summarized
 15 here. Under Executive Order No. 12958, information is classified "TOP SECRET" if
 16 unauthorized disclosure of the information reasonably could be expected to cause exceptionally
 17 grave damage to the national security of the United States; "SECRET" if unauthorized disclosure
 18 of the information reasonably could be expected to cause serious damage to national security;
 19 and "CONFIDENTIAL" if unauthorized disclosure of the information reasonably could be
 20 expected to cause identifiable damage to national security. At the beginning of each paragraph
 21 of this declaration, the letters "U," "C," "S," and "TS" indicate respectively that the information
 22 is either UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP SECRET.
 23

24 7. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented
 25 Information (SCI), which is subject to special access and handling requirements because it
 26
 27
 28

~~TOP SECRET//COMINT- [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON//NOFORN//MR~~
1 involves or derives from particularly sensitive intelligence sources and methods. This
2 declaration references communications intelligence (COMINT), also referred to as special
3 intelligence (SI), which is a subcategory of SCI that identifies information that was derived from
4 exploiting cryptographic systems or other protected sources by applying methods or techniques,
5 or from intercepted foreign communications. This declaration also references human
6 intelligence (HCS), another subcategory of SCI that identifies information derived from
7 individuals who provide intelligence information. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 8. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ This declaration also contains information
13 about the Terrorist Surveillance Program (TSP), a controlled access signals intelligence program
14 under presidential authorization in response to the attacks of September 11, 2001. Information
15 pertaining to this program is denoted with the special marking "TSP." [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 9. ~~(S)~~ Finally, information labeled "NOFORN" may not be released to foreign
21 governments, foreign nationals, or non-U.S. citizens without permission of the originator and in
22 accordance with DNI policy. The "ORCON" designator means that the originator of the
23 information controls to whom it is released. Finally, this document is marked Manual Review
24 ("MR") indicating that it is not subject to automatic declassification at any specific date.
25

26 ~~(U)~~ **BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

27 10. ~~(U)~~ The position of Director of National Intelligence was created by Congress in
28

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//ICS//ORCON//NOFORN//MR~~
 the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
 the National Security Act of 1947). Subject to the authority, direction, and control of the
 President, the Director of National Intelligence serves as the head of the U.S. Intelligence
 Community and as the principal adviser to the President, the National Security Council, and the
 Homeland Security Council for intelligence matters related to the national security. See 50
 U.S.C. § 403(b)(1), (2).

11. ~~(U)~~ 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 the
 Treasury, the Department of Energy, the 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).

12. ~~(U)~~ The responsibilities and authorities of the Director of National Intelligence
 are set forth in the National Security Act of 1947, 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

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON//NOFORN//MR~~
 Staff and senior military commanders, and the Senate and House of Representatives and
 1 committees thereof. *See* 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the
 2 objectives of, determining the requirements and priorities for, and managing and directing the
 3 tasking, collection, analysis, production, and dissemination of national intelligence by elements
 4 of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for
 5 developing and determining, based on proposals submitted by the heads of agencies and
 6 departments within the Intelligence Community, an annual consolidated budget for the National
 7 Intelligence Program for presentation to the President, and for ensuring the effective execution of
 8 the annual budget for intelligence and intelligence-related activities, and for managing and
 9 allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).
 10
 11
 12

13 13. ~~(S)~~ In addition, the National Security Act of 1947, as amended, provides that
 14 “[t]he Director of National Intelligence shall protect intelligence sources and methods from
 15 unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
 16 establishes and implements guidelines for the Intelligence Community for the classification of
 17 information under applicable law, Executive orders, or other Presidential directives and access to
 18 and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
 19 for the establishment of uniform standards and procedures for the grant of access to Sensitive
 20 Compartmented Information (“SCP”) to any officer or employee of any agency or department of
 21 the United States, and for ensuring the consistent implementation of those standards throughout
 22 such departments and agencies. *Id.* § 403-1(j)(1), (2).
 23
 24

25 14. ~~(U)~~ By virtue of my position as the Director of National Intelligence, and unless
 26 otherwise directed by the President, I have access to all intelligence related to the national
 27 security that is collected by any department, agency, or other entity of the United States. *See* 50
 28

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~
 1 U.S.C. § 403-1(b); Executive Order 12333 § 1.3(a), as amended. Pursuant to Executive Order
 2 No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003),
 3 reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me
 4 to exercise original TOP SECRET classification authority.

~~(S)~~ ASSERTION OF STATE SECRETS PRIVILEGE

15. ~~(U)~~ After careful and actual personal consideration of the matter, based upon my
 7 own knowledge and information obtained in the course of my official duties, including the
 8 information contained in the Public and Classified *In Camera*, *Ex Parte* Declarations of Deborah
 9 A. Bonanni, Chief of Staff, National Security Agency, I have determined that the disclosure of
 10 certain information—as set forth herein and described in more detail in the Classified NSA
 11 Declaration—would cause exceptionally grave damage to the national security of the United
 12 States and, therefore, must be protected from disclosure and excluded from this case. Thus, as to
 13 this information, I formally assert the state secrets privilege. In addition, it is my judgment that
 14 sensitive state secrets are so central to the subject matter of the litigation that any attempt to
 15 proceed in the case will substantially risk the disclosure of the privileged information described
 16 herein and in more detail in the classified declarations, and will therefore risk exceptionally
 17 grave damage to the national security of the United States.

~~(U)~~ ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT

16. ~~(U)~~ Through this declaration, I also hereby invoke and assert a statutory privilege
 23 held by the Director of National Intelligence under the National Security Act to protect the
 24 information described herein, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory
 25 privilege for intelligence sources and methods is coextensive with my state secrets privilege
 26 assertion.
 27
 28

~~TOP SECRET//COMINT [REDACTED] TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT-ECI [REDACTED] //TSP//ICS//ORCON/NOFORN//MR~~
~~(U) INFORMATION SUBJECT TO ASSERTIONS OF PRIVILEGE~~

1
 2 17. ~~(U)~~ In general and unclassified terms, the following categories of information are
 3 subject to my state secrets and statutory privilege assertions:

- 4 A. ~~(U)~~ Information concerning the specific nature of the al-
 5 Qaeda terrorist threat; and
- 6 B. ~~(U)~~ Information that may tend to confirm or deny whether
 7 the plaintiffs have been subject to any alleged NSA
 8 intelligence activity that may be at issue in this matter; and
- 9 C. ~~(U)~~ Any information concerning NSA intelligence
 10 activities, sources, or methods that may relate to or be
 11 necessary to litigate plaintiffs' allegations, including
 12 allegations that the NSA, with the assistance of
 13 telecommunications carriers such as AT&T,
 14 indiscriminately intercepts the content of communications
 15 and also collects the communication records of millions of
 16 Americans as part of an alleged presidentially-authorized
 17 "Program" after 9/11. *See, e.g.*, Complaint at ¶¶ 2-13; 39-
 18 97.

19 ~~(U)~~ The scope of this assertion includes but is not limited
 20 to:

21 (i) ~~(U)~~ Information concerning the scope and
 22 operation of the now inoperative "Terrorist Surveillance
 23 Program" ("TSP") regarding the interception of the content
 24 of certain one-end international communications
 25 reasonably believed to involve a member or agent of al-
 26 Qaeda or an affiliated terrorist organization, and any other
 27 information related to demonstrating that the NSA does not
 28 otherwise engage in the content surveillance dragnet that
 the plaintiffs allege; and

(ii) ~~(U)~~ Information concerning whether or not the
 NSA obtained from telecommunications companies such as
 AT&T communication transactional records as alleged in
 the Complaint; *see, e.g.*, Complaint ¶¶ 10; 82-97; and

(iii) ~~(U)~~ Information that may tend to confirm or
 deny whether AT&T (and to the extent relevant or
 necessary, any other telecommunications carrier), has
 provided assistance to the NSA in connection with any
 alleged activity.

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//ICS//ORCON//NOFORN//MR~~

1 (U) DESCRIPTION OF INFORMATION AND HARM OF DISCLOSURE

2 A. (S) Information Concerning the al-Qaeda Terrorist Threat

3 18. ~~(U)~~ To the extent specific information about the al-Qaeda threat is relevant to
4 litigation of plaintiffs' allegations as to post-9/11 actions taken to meet that threat, such
5 information could not be disclosed without revealing intelligence sources, methods, and
6 information of the United States and thereby causing exceptionally grave damage to the national
7 security. Therefore, I assert the state secrets and statutory privilege to protect such information
8 from disclosure.
9

10
11 19. ~~(S//OC/NF)~~ The intelligence activities, sources, and methods that are implicated
12 by this lawsuit, and put at risk of disclosure in further proceedings, must be viewed and
13 understood in the context of the extremely serious threat faced by the United States. In sum, the
14 Intelligence Community assesses that al-Qaeda remains intent on conducting terrorist attacks
15 inside the United States. This is so notwithstanding a series of setbacks to the al-Qaeda terrorist
16 network. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20
21 [REDACTED] Preventing such attacks is the U.S. Intelligence Community's highest priority, and the
22 Intelligence Community is collecting information aggressively against the al-Qaeda network to
23 uncover indications of credible threats.¹
24
25
26
27

28 ¹ ~~(S//OC/NF)~~ The following summary of the current al-Qaeda threat is drawn from an Intelligence Community assessment made in January 2009.

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~
~~(S//NF)~~ Al-Qaeda Remains Intent on Striking the Homeland

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20. (TS//HCS [REDACTED] //OC/NF [REDACTED]) Al-Qaeda's strategic intent remains focused on striking the United States— [REDACTED]

[REDACTED]

[REDACTED]. A body of reporting—including public statements from senior leaders, [REDACTED]—highlights the persistent and evolving threat the group poses to the United States and our allies.

- Usama Bin Ladin's statement in September 2007 praising the Iraq jihad and the 9/11 attacks indicated that al-Qaeda saw no "innocent" American citizens because they were complicit with their government's policies, and that the solution "is to continue to escalate the killing and fighting against you."

- [REDACTED]

- The plot to bring down airliners between the United Kingdom and North America that was disrupted in August 2006 demonstrated al-Qaeda's continued emphasis on large

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] TSP//ICS//ORCON/NOFORN//MR~~

scale, high-profile attacks against the West, [REDACTED]

1
2 • Al-Qaeda senior leaders and their successors since 9/11 have consistently focused
3 plotting against U.S. interests on either conducting spectacular attacks against the
4 Homeland or striking other symbolic or economic targets. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 21. ~~(TS//ICS [REDACTED] //OC/NF [REDACTED])~~ The Intelligence Community is not aware of the
10 specific details of a current plot to attack the U.S. Homeland. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 • [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~TOP SECRET//COMINT [REDACTED] TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//ICS//ORCON//NOFORN//MR~~

1

2

3

22. ~~(S//NF)~~ [REDACTED]

█

█

█

█

█

█

█

█

█

█

█

█

█

█

█

█

~~(S//NF)~~ Al-Qaeda's Continued Efforts to Train and Deploy Operatives

20

23. ~~(TS//ICS, [REDACTED] //OC/NF)~~ [REDACTED]

█

█

█

█

█

█

█

█

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//ICS//ORCON//NOFORN//MR~~

1

2

3

4

5

6

7

8

9

10

11

12

13

■

■

■

■

■

■

■

■

■

■

■

■

■

■

[REDACTED]

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~

1

[REDACTED]

2

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7

24. ~~(TS//HCS [REDACTED] //OC/NF [REDACTED])~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~TOP SECRET//COMINT [REDACTED] TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] /TSP//HCS//ORCON//NOFORN//MR~~

1 25. ~~(TS//HCS, [REDACTED] /OC/NF)~~ The death or detention of more than a dozen al-Qaeda
2 senior leaders and their deputies since early 2008 represents significant losses for the group.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 26. ~~(TS// [REDACTED])~~ The Internet is a contributing factor in the radicalization of some
15 individuals, increasing the risk of self-selecting fighters attempting to establish affiliations with
16 extremist organizations or engaging in operations independent of formal terrorist groups.
17 Additionally, al-Qaeda and like-minded Sunni extremists are attempting [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 ~~(S//NF)~~ Al-Qaeda's Weapons and Tactics

26 27. ~~(S//NF)~~ [REDACTED]
[REDACTED]

~~TOP SECRET//COMINT [REDACTED] /TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

30. ~~(TS//SI//OC/NF)~~ These various examples of some of our intelligence

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] [REDACTED] //TSP//ICS//ORCON//NOFORN//MR~~

1 information demonstrate that the al-Qaeda network continues to plan ways to inflict a
 2 catastrophic attack. The severity of that threat and the difficulty of tracking al-Qaeda is precisely
 3 the reason the Government is utilizing all lawful intelligence gathering capabilities. I set forth
 4 this information not only to provide the Court with crucial background as to why the intelligence
 5 activities implicated by or directly at issue in this case are being undertaken, but also to assert a
 6 claim of privilege over this threat information. Although the foregoing threat assessment
 7 demonstrates why the Government undertakes the activities described herein, the Government
 8 cannot disclose this threat information in defending the legality of the intelligence activities,
 9 sources, and methods being challenged, since to do so obviously would disclose to our
 10 adversaries what we know of their plans and how we may be obtaining information about them.
 11 Such disclosures would lead our adversaries not only to alter their plans, but also to implement
 12 greater security for their communications, thereby increasing the risk of non-detection. In
 13 addition, disclosure of threat information might reveal human sources for the United States and,
 14 thus compromise those sources and put lives in danger. Accordingly, although I believe this
 15 threat information is crucial to understanding the NSA intelligence activities, sources, and
 16 methods implicated by the plaintiffs' allegations, I must assert the states secrets privilege and
 17 the DNI's statutory privilege over this classified threat information because of the exceptionally
 18 grave danger to national security that could reasonably be expected to result from its disclosure.
 19

22 **B. ~~(S)~~ Information That May Tend to Confirm or Deny Whether the Plaintiffs**
 23 **Have Been Subject to the Alleged NSA Intelligence Activities**

24 31. ~~(S)~~ Next, I am also asserting privilege over information that would reveal
 25 whether particular individuals, including the named plaintiffs in this lawsuit, have been subject
 26 to the alleged NSA intelligence activities. Disclosure of such information would cause
 27 exceptionally grave damage to the national security.
 28

~~TOP SECRET//COMINT [REDACTED] [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~

32. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

33. ~~(U)~~ The NSA cannot publicly confirm or deny whether any particular individual is subject to surveillance activities. If the NSA were to reveal that an individual is the target of surveillance, the collection capability relating to that individual would certainly be compromised. On the other hand, if the NSA were to reveal that an individual is not the target of surveillance, adversaries would know that a particular individual has avoided surveillance and is a secure source for communicating. Moreover, providing assurances to those individuals that are not being targeted quickly becomes unworkable when faced with a case in which an individual has in fact been targeted. If the NSA were to confirm that any specific individual is not the target of surveillance, but later refuse to confirm or deny that information in a case involving an actual target, it would be apparent that surveillance was occurring in the latter case. The only recourse for the NSA is to neither confirm nor deny whether someone has been targeted or subject to NSA activities, regardless of whether the individual has been targeted or not. To say otherwise when challenged in litigation would result in the frequent, routine exposure of NSA information, sources, and methods, and would severely undermine surveillance activities in general.

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~
 C. ~~(S)~~ Information Concerning NSA Activities, Sources, or Methods

1
 2 34. ~~(U)~~ Second, I am also asserting privilege over any other facts concerning NSA
 3 intelligence activities, sources, or methods that may relate to or be necessary to adjudicate the
 4 plaintiffs' claims, including allegations that the NSA, with the assistance of telecommunication
 5 companies including AT&T, has indiscriminately intercepted the content and obtained the
 6 communications records of millions of ordinary Americans as part of the Program authorized by
 7 the President after 9/11. *See, e.g.*, Complaint at ¶¶ 2-13; 39-97. As noted above, my privilege
 8 assertion encompasses (1) facts concerning the operation of the now-defunct Terrorist
 9 Surveillance Program, including any facts needed to demonstrate that the TSP was limited
 10 to the interception of the content² of one-end foreign communications reasonably believed to
 11 involve a member or agent of al-Qaeda or an affiliated terrorist organization, and that the NSA
 12 does not otherwise conduct a dragnet of content surveillance as the plaintiffs allege; and
 13 (2) information concerning whether or not the NSA obtains transactional communication records
 14 from telecommunications companies such as AT&T as plaintiffs allege.

15
 16
 17
 18 35. ~~(U)~~ As the NSA indicates, *see* Public NSA Declaration ¶ 14, the NSA's collection
 19 of the content of communications under the TSP was directed at international communications in
 20 which a participant was reasonably believed to be associated with al-Qaeda or an affiliated
 21 organization. Thus, as the Government has previously stated, plaintiffs' allegation that the NSA
 22 has indiscriminately collected the content of millions of communications sent or received by
 23 people inside the United States after 9/11 under the TSP is false. I concur with the NSA that to
 24 the extent it must demonstrate in this case that the TSP was not the content dragnet plaintiffs
 25 allege, or demonstrate that the NSA has not otherwise engaged in the alleged content dragnet,
 26
 27

28 ² The term "content" is used herein to refer to the substance, meaning, or purport of a communication, as defined in 18 U.S.C. § 2510(8).

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~
 1 highly classified NSA intelligence sources and methods about the operation of the TSP and other
 2 NSA intelligence activities would be disclosed which would cause exceptional harm to national
 3 security.

4 36. ~~(U)~~ I am also asserting privilege over information concerning whether or not the
 5 NSA obtained from telecommunications companies such as AT&T the complete and allegedly
 6 ongoing disclosure of private telephone and Internet transactional records of those companies
 7 millions of customers, *see, e.g.*, Complaint ¶¶ 10 and 82-97. I concur with the NSA that
 8 confirmation or denial of any information concerning this allegation would cause exceptionally
 9 grave harm to national security, including by risking disclosure of whether or not the NSA
 10 utilizes particular intelligence sources and methods and, thus, the NSA's capabilities or lack
 11 thereof.
 12

13
 14 37. ~~(TS//SI//TSP//OC/NF)~~ In particular, as set forth in the NSA's Classified
 15 Declaration, the United States faced urgent and immediate intelligence challenges after the
 16 September 11 attacks, and undertook signals intelligence activities pursuant to presidential
 17 authorization that were designed to meet those challenges and to detect and prevent future
 18 terrorist attacks by al-Qaeda and its affiliates. Those activities include the Terrorist Surveillance
 19 Program ("TSP") and similar content surveillance that later became subject to orders of the
 20 Foreign Intelligence Surveillance Court, as well as the bulk collection of telephony and Internet
 21 non-content meta data currently authorized by the FISC and used to discover contacts [REDACTED]
 22

23 [REDACTED] See Classified NSA Declaration
 24 ¶¶ 39-67.
 25

26 38. ~~(TS//SI//TSP//OC/NF)~~ Based on my personal consideration and judgment as to
 27 the harm disclosure would cause to national security, my privilege assertion includes, but is not
 28

~~TOP SECRET//COMINT [REDACTED] TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] /TSP//HCS//ORCON//NOFORN//MR~~
 limited to, the following activities discussed in the NSA classified declaration:

1
 2 39. ~~(TS//SI//TSP//OC/NP)~~ First, I assert privilege over facts concerning the
 3 operation of the Terrorist Surveillance Program and any other NSA intelligence activities needed
 4 to demonstrate that the TSP was limited to the interception of one-end foreign communications
 5 reasonably believed to involve a member or agent of al-Qaeda or an affiliated terrorist
 6 organization, and that the NSA does not otherwise conduct a dragnet of content surveillance as
 7 the plaintiffs allege. Such facts include those concerning (1) how targets were selected under the
 8 TSP; (2) how specific methods were used under the TSP to intercept telephone and Internet
 9 communications and to minimize the risk of collecting non-target communications and purely
 10 domestic communications; (3) the nature and identity of the targets under the TSP, [REDACTED]
 11 [REDACTED] (4) and additional classified details about the operation of the TSP that
 12 would be necessary to litigate the plaintiffs' allegations (to the extent relevant) including facts
 13 concerning the operational swiftness and agility of the TSP, particularly in conjunction with meta
 14 data analysis [REDACTED]; and the
 15 effectiveness and success of the TSP; and (5) other NSA surveillance activities that may be
 16 needed to address and disprove the content dragnet allegations [REDACTED]

17
 18
 19
 20 [REDACTED] See Classified NSA Declaration
 21 ¶¶ 39-47. In my judgment, revealing or risking disclosure of the foregoing NSA intelligence
 22 activities, sources, and methods in order to show that the NSA is not conducting the "dragnet" on
 23 the content of communications that plaintiffs allege would cause exceptional harm to national
 24 security by disclosing to our adversaries the ability of the United States to monitor and track their
 25 activities and communications.
 26

27 40. ~~(TS//SI//TSP//OC/NP)~~ Third, I also assert privilege over facts that would
 28

~~TOP SECRET//COMINT [REDACTED] /TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//ICS//ORCON//NOFORN//MR~~
disclose or describe the NSA's meta data collection activities. See Classified NSA Declaration

¶ 49-57. In my judgment, the NSA is unable to disclose any information about the existence or operation of the NSA's bulk collection or targeted analysis of Internet or telephony meta data without causing exceptionally grave harm to national security. These are among the most important intelligence tools the NSA uses, and they have never been officially confirmed or denied by the United States. Disclosing or confirming these activities would seriously undermine an essential tool for tracking possible terrorist plots and would help foreign adversaries evade detection. Such a disclosure would also undermine ongoing intelligence operations authorized by the FISC.

41. ~~(TS//SI//TSP//OC/NF)~~ Finally, I also assert privilege over information concerning NSA activities conducted pursuant to various FISC orders and under the authority of the FISA described by the NSA. See Classified NSA Declaration ¶¶ 58-67. In my judgment, disclosure of current surveillance activities under orders and supervision of the FISC and authority of the FISA, either directly or indirectly, would seriously compromise, if not destroy, vital ongoing intelligence operations. My privilege assertion extends to the existence of and any information concerning the (i) FISC Pen Register Order, as subsequently reauthorized, *see id.* ¶ 59; (ii) FISC Telephone Business Records Order, as subsequently reauthorized, *see id.* ¶¶ 60-63; [REDACTED] (iv) FISC Foreign Telephone and Email Order, *see id.* ¶ 65; and (v) NSA activities conducted pursuant to the Protect America Act and the Foreign Intelligence Surveillance Act Amendments Act of 2008, including directives issued to telecommunication carriers under those Acts, *see id.* ¶¶ 66-67.

42. ~~(TS//SI//TSP//OC/NF)~~ I concur with the NSA that the activities discussed herein and described further by the NSA--in particular the meta data collection activities--are among the

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~
most important intelligence tools available to the United States for protecting the Homeland from

another catastrophic terrorist attack. I also concur that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In my judgment, after personal consideration of the matter, disclosing the information described herein and by the NSA would compromise these critical activities, sources, and methods, thereby helping our adversaries evade detection and causing exceptionally grave damage to the national security of the United States.

D. ~~(U)~~ Plaintiffs' Allegations that AT&T Provided Assistance to the NSA with the Alleged Activities

43. ~~(U)~~ In addition, I am asserting privilege over information that may tend to confirm or deny whether or not AT&T (or to the extent necessary whether or not any other telecommunications provider) has assisted the NSA with alleged intelligence activities. The disclosure of any information that would tend to confirm or deny allegations of such assistance would cause exceptionally grave harm to the national security. Confirming or denying such allegations, again, would reveal to foreign adversaries whether or not the NSA utilizes particular intelligence sources and methods and, thus, either compromise actual sources and methods or disclose that the NSA does not utilize a particular source or method. Such confirmation or denial would also replace speculation with certainty for hostile foreign adversaries who are balancing the risk that a particular channel of communication may not be secure against the need to communicate efficiently.

44. ~~(S)~~ ~~(S)~~ [REDACTED] ~~(S)~~ [REDACTED]

[REDACTED]

[REDACTED]

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] //TSP//HCS//ORCON//NOFORN//MR~~

1
2
3
4
5
6
7
8
9
10
11
12
13

[REDACTED]

14 47. ~~(TS//SI [REDACTED] TSP//OC/NF [REDACTED]~~

15
16
17
18
19
20
21
22

[REDACTED]

Accordingly, I assert the state secrets and DNI statutory privilege over such information,

[REDACTED]

(U) RISK OF LITIGATION

24
25
26
27
28

48. ~~(TS//SI//OC/NF)~~ Finally, I concur with the NSA that further litigation of this case will inherently risk the disclosure of highly classified activities. While plaintiffs wrongly allege that the NSA is conducting a dragnet program of content surveillance, disproving plaintiffs' speculation would risk or require revealing NSA intelligence activities, sources and

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON//NOFORN//MR~~
 1 methods, including bulk meta data collection activities. Those vital activities, as described
 2 herein, are highly classified, sensitive, and fragile, and any effort to disclose information about
 3 them could have grave consequences for the national security.

4 50. ~~(TS//SI//OC/NF)~~ The stakes we face in the U.S. Intelligence Community are of
 5 the highest magnitude. We know that al-Qaeda continues to plan a mass casualty "spectacular"
 6 attack inside the United States again that would cause catastrophic loss of life, severe economic
 7 harm, or threaten the continuity of government. The NSA's activities described herein and by
 8 the NSA, including NSA sources and methods currently being utilized under authority of the
 9 FISA, are all directed at this terrible threat.

10
 11 ~~(U)~~ CONCLUSION

12
 13 51. ~~(U)~~ In sum, I am asserting the state secrets privilege and the DNI's statutory
 14 privilege set forth in 50 U.S.C. § 403-1(i)(1) to protect the classified national security
 15 information described herein and in the Classified NSA Declaration. Moreover, because
 16 proceedings in this case risk disclosure of privileged and classified intelligence-related
 17 information, I respectfully request that the Court not only protect that information from
 18 disclosure, but to take all steps necessary, including dismissal of this action, to protect the
 19 intelligence information, sources, and methods described herein in order to prevent exceptional
 20 harm to the national security of the United States.

21
 22 I declare under penalty of perjury that the foregoing is true and correct.

23
 24
 25 DATE: April 3, 2009

26 
 27 _____
 28 DENNIS C. BLAIR
 Director of National Intelligence

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON//NOFORN//MR~~