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

17	CAROLYN JEWEL, <i>et al.</i>) No. 08-cv-4873-VRW
18)
19	Plaintiffs,) PUBLIC DECLARATION
20) OF DENNIS C. BLAIR
21	v.) DIRECTOR OF NATIONAL
22	NATIONAL SECURITY AGENCY <i>et al.</i>) INTELLIGENCE
23	Defendants.) Date: June 25, 2009
24) Time: 2:30 p.m.
) Courtroom: 6, 17 th Floor

25) Chief Judge Vaughn R. Walker
 26)
 27)
 28)

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

2 **INTRODUCTION**

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

12
13 2. 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. I am also executing a classified declaration,
20 solely for the Court’s *in camera, ex parte* review, which further sets forth the basis for my
21 privilege assertion. *See Classified In Camera, Ex Parte Declaration of Dennis C. Blair, Director*
22 *of National Intelligence.*
23
24

25 **SUMMARY**

26 3. In the course of my official duties, I have been advised of this lawsuit and the
27 allegations at issue in the plaintiffs’ Complaint. In personally considering this matter, I have
28 executed a separate classified declaration dated April 3, 2009. Moreover, I have read and

1 personally considered the information contained in the Public and Classified *In Camera*, *Ex*
2 *Parte* Declarations of Deborah A. Bonanni, Chief of Staff, National Security Agency, executed
3 on April 3, 2009. Disclosure of the information covered by this privilege assertion reasonably
4 could be expected to cause exceptionally grave damage to the national security of the United
5 States and, therefore, the information should be excluded from any use in this case. In addition,
6 it is my judgment that sensitive state secrets are so central to the subject matter of the litigation
7 that any attempt to proceed in the case will substantially risk the disclosure of the classified
8 privileged national security information described herein (and in more detail in my classified
9 declaration and NSA's classified declaration) and will therefore risk exceptionally grave damage
10 to the national security of the United States.
11

12 **BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

13
14 4. The position of Director of National Intelligence was created by Congress in the
15 Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
16 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
17 the National Security Act of 1947). Subject to the authority, direction, and control of the
18 President, the Director of National Intelligence serves as the head of the U.S. Intelligence
19 Community and as the principal adviser to the President, the National Security Council, and the
20 Homeland Security Council for intelligence matters related to the national security. *See* 50
21 U.S.C. § 403(b)(1), (2).
22

23
24 5. The United States "Intelligence Community" includes the Office of the Director
25 of National Intelligence; the Central Intelligence Agency; the National Security Agency; the
26 Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National
27 Reconnaissance Office; other offices within the Department of Defense for the collection of
28 specialized national intelligence through reconnaissance programs; the intelligence elements of

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

8
9 6. The responsibilities and authorities of the Director of National Intelligence are set
10 forth in the National Security Act of 1947, as amended. *See* 50 U.S.C. § 403-1. These
11 responsibilities include ensuring that national intelligence is provided to the President, the heads
12 of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of
13 Staff and senior military commanders, and the Senate and House of Representatives and
14 committees thereof. *See* 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the
15 objectives of, determining the requirements and priorities for, and managing and directing the
16 tasking, collection, analysis, production, and dissemination of national intelligence by elements
17 of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for
18 developing and determining, based on proposals submitted by the heads of agencies and
19 departments within the Intelligence Community, an annual consolidated budget for the National
20 Intelligence Program for presentation to the President, and for ensuring the effective execution of
21 the annual budget for intelligence and intelligence-related activities, and for managing and
22 allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

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24
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26 7. In addition, the National Security Act of 1947, as amended, provides that “[t]he
27 Director of National Intelligence shall protect intelligence sources and methods from
28 unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI

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

8
9 8. By virtue of my position as the Director of National Intelligence, and unless
10 otherwise directed by the President, I have access to all intelligence related to the national
11 security that is collected by any department, agency, or other entity of the United States. *See* 50
12 U.S.C. § 403-1(b); Executive Order 12333 § 1.3(a), as amended. Pursuant to Executive Order
13 No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003),
14 reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me
15 to exercise original TOP SECRET classification authority.
16

17
18 **ASSERTION OF STATE SECRETS PRIVILEGE**

19 9. After careful and actual personal consideration of the matter, based upon my own
20 knowledge and information obtained in the course of my official duties, including the
21 information contained in the Public and Classified *In Camera*, *Ex Parte* Declarations of Deborah
22 A. Bonanni, Chief of Staff, National Security Agency, I have determined that the disclosure of
23 certain information—as set forth herein and described in more detail in my classified declaration
24 and in the classified NSA declaration—would cause exceptionally grave damage to the national
25 security of the United States and, therefore, must be protected from disclosure and excluded from
26 this case. Thus, as to this information, I formally assert the state secrets privilege. In addition, it
27 is my judgment that sensitive state secrets are so central to the subject matter of the litigation that
28

1 any attempt to proceed in the case will substantially risk the disclosure of the privileged
2 information described herein and in more detail in the classified declarations, and will therefore
3 risk exceptionally grave damage to the national security of the United States.

4 **ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT**

5 10. Through this declaration, I also hereby invoke and assert a statutory privilege held
6 by the Director of National Intelligence under the National Security Act to protect the
7 information described herein, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory
8 privilege for intelligence sources and methods is coextensive with my state secrets privilege
9 assertion.
10

11 **INFORMATION SUBJECT TO ASSERTIONS OF PRIVILEGE**

12 11. In general and unclassified terms, the following categories of information are
13 subject to my state secrets and statutory privilege assertions:
14

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

25 The scope of this assertion includes but is not limited to:

- 26 (i) Information concerning the scope and operation
27 of the now inoperative "Terrorist Surveillance Program"
28 ("TSP") regarding the interception of the content of certain
one-end international communications reasonably believed
to involve a member or agent of al-Qaeda or an affiliated

1 terrorist organization, and any other information related to
2 demonstrating that the NSA does not otherwise engage in
3 the content surveillance dragnet that the plaintiffs allege;
4 and

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

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

14 HARM OF DISCLOSURE

15 12. As set forth in my classified declaration submitted solely for the Court's *in*
16 *camera, ex parte* review, disclosure of information in the foregoing categories would cause
17 exceptionally grave harm to national security. I briefly summarize below, in unclassified terms,
18 the information subject to my privilege assertion and the harms to national security that would
19 result from disclosure of this information.

20 13. First, I am asserting privilege over information that would reveal whether
21 particular individuals, including the named plaintiffs in this lawsuit, have been subject to alleged
22 NSA intelligence activities. Disclosure of such information would cause exceptionally grave
23 damage to the national security. The NSA cannot publicly confirm or deny whether any
24 particular individual is subject to surveillance activities. If the NSA were to reveal that an
25 individual is the target of surveillance, the collection capability relating to that individual would
26 certainly be compromised. On the other hand, if the NSA were to reveal that an individual is not
27 the target of surveillance, adversaries would know that a particular individual has avoided
28 surveillance and is a secure source for communicating. Moreover, providing assurances to those

1 individuals that are not being targeted quickly becomes unworkable when faced with a case in
2 which an individual has in fact been targeted. If the NSA were to confirm that any specific
3 individual is not the target of surveillance, but later refuse to confirm or deny that information in
4 a case involving an actual target, it would be apparent that surveillance was occurring in the
5 latter case. The only recourse for the NSA is to neither confirm nor deny whether someone has
6 been targeted or subject to NSA activities, regardless of whether the individual has been targeted
7 or not. To say otherwise when challenged in litigation would result in the frequent, routine
8 exposure of NSA information, sources, and methods, and would severely undermine surveillance
9 activities in general.
10

11 14. Second, I am also asserting privilege over any other facts concerning NSA intelligence
12 activities, sources, or methods that may relate to or be necessary to litigate the plaintiffs' claims,
13 including allegations that the NSA, with the assistance of telecommunication companies
14 including AT&T, has indiscriminately intercepted the content and obtained the communications
15 records of millions of ordinary Americans as part of the Program authorized by the President
16 after 9/11. *See, e.g.*, Complaint at ¶¶ 2-13; 39-97. As noted above, my privilege assertion
17 encompasses (1) facts concerning the operation of the now-inoperative Terrorist Surveillance
18 Program, including any facts needed to demonstrate that the TSP was limited to the interception
19 of the content¹ of one-end foreign communications reasonably believed to involve a member or
20 agent of al-Qaeda or an affiliated terrorist organization, and that the NSA does not otherwise
21 conduct a dragnet of content surveillance as the plaintiffs allege; and (2) information concerning
22 whether or not the NSA obtains transactional communication records from telecommunications
23 companies such as AT&T as plaintiffs allege.
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¹ 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).

1 15. As the NSA indicates, *see* Public NSA Declaration ¶ 14, the NSA's collection of
2 the content of communications under the TSP was directed at international communications in
3 which a participant was reasonably believed to be associated with al-Qaeda or an affiliated
4 organization. Thus, as the Government has previously stated, plaintiffs' allegation that the NSA
5 has indiscriminately collected the content of millions of communications sent or received by
6 people inside the United States after 9/11 under the TSP is false. I concur with the NSA that to
7 the extent it must demonstrate in this case that the TSP was not the content dragnet plaintiffs
8 allege, or demonstrate that the NSA has not otherwise engaged in the alleged content dragnet,
9 highly classified NSA intelligence sources and methods about the operation of the TSP and other
10 NSA intelligence activities would be disclosed, which would cause exceptional harm to national
11 security.
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13
14 16. I am also asserting privilege over information concerning whether or not the NSA
15 obtained from telecommunications companies such as AT&T the complete and allegedly
16 ongoing disclosure of private telephone and Internet transactional records of those companies
17 millions of customers, *see, e.g.*, Complaint ¶¶ 10 and 82-97. I concur with the NSA that
18 confirmation or denial of any information concerning whether the NSA collects large quantities
19 of communication records would disclose information about whether or not the NSA utilizes
20 particular intelligence sources and methods and, thus, the NSA's capabilities or lack thereof and
21 would cause exceptionally grave damage to national security.
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24 17. In addition, I am asserting privilege over information that may tend to confirm or
25 deny whether or not AT&T (or to the extent necessary whether or not any other
26 telecommunications provider) has assisted the NSA with alleged intelligence activities. The
27 disclosure of any information that would tend to confirm or deny allegations of such assistance
28 would cause exceptionally grave harm to the national security. Confirming or denying such

1 allegations, again, would reveal to foreign adversaries whether or not the NSA utilizes particular
2 intelligence sources and methods and, thus, either compromise actual sources and methods or
3 disclose that the NSA does not utilize a particular source or method. Such confirmation or denial
4 would also replace speculation with certainty for hostile foreign adversaries who are balancing
5 the risk that a particular channel of communication may not be secure against the need to
6 communicate efficiently.
7

8 18. Finally, to the extent specific information about the al-Qaeda threat is relevant to
9 litigation of plaintiffs' allegations as to post-9/11 actions taken to meet that threat, such
10 information could not be disclosed without revealing intelligence sources, methods and
11 information of the United States and thereby causing exceptionally grave damage to the national
12 security. Therefore, I assert the state secrets and statutory privilege to protect such information
13 from disclosure as well.
14

15 19. I am unable to describe further on the public record the information covered by
16 my privilege assertion and the national security harms associated with the disclosure of such
17 information. Accordingly, I respectfully refer the Court to my classified declaration, along with
18 NSA's classified declaration, both of which are submitted in this case solely for the Court's *in*
19 *camera, ex parte* review.
20

21 **CONCLUSION**

22 20. In sum, I am asserting the state secrets privilege and the DNI's statutory privilege
23 set forth in 50 U.S.C. § 403-1(i)(1) to protect the classified national security information
24 described herein and detailed in my classified declaration that is available for the Court's *in*
25 *camera* and *ex parte* review. Moreover, because proceedings in this case risk disclosure of
26 privileged and classified intelligence-related information, I respectfully request that the Court not
27 only protect that information from disclosure but also dismiss this case to prevent exceptionally
28

1 grave harm to the national security of the United States.

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

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6 DATE: April 3, 2009



7 DENNIS C. BLAIR
8 Director of National Intelligence
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