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 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 REZA ESLAMINIA,  
 MINA HAKIMI ESLAMINA,  
 13 AMIR ESLAMINA,

14 Plaintiffs,

15 v.

16 FEDERAL BUREAU OF INVESTIGATION;  
 U.S. DEPARTMENT OF JUSTICE,

17 Defendants.  
 18

) No. C 99-3249 MHP

) **DEFENDANTS’ RESPONSE TO THE**  
 ) **COURT’S REQUEST FOR FURTHER**  
 ) **SUBMISSIONS; AND RENEWED**  
 ) **ADMINISTRATIVE MOTION FOR**  
 ) **LEAVE TO PRESENT CLASSIFIED**  
 ) **EXHIBIT 1 TO THE DECLARATION OF**  
 ) **DAVID HARDY IN CAMERA AND**  
 ) **UNDER SEAL; [proposed] ORDER**

19 This is an action arising under the Freedom of Information Act, 5 U.S.C. § 552  
 20 (“FOIA”). On August 10, 2009, the Court directed the Defendants to address the FOIA  
 21 exemptions in light of 25 years passing since the records in question were classified. (ECF Dkt.  
 22 66). The parties responded. (ECF Dkt. 67, 69). On November 24, 2009, Defendants made an  
 23 Administrative Motion for Leave to Present Classified Exhibit. (ECF Dkt. 70). That request  
 24 remains pending and is renewed herein.

25 On August 26, 2011, the Court asked the parties for further submissions on the implication of  
 26 Executive Order 13526, 75 Fed. Reg 707 (Dec. 29, 2009), which replaces Executive Orders 13292  
 27 and 12958, on the declassification of the records at issue here. (ECF Dkt No. 89).

28 Defendants have carefully reviewed Executive Order 13526 and determined that the records

1 will not be automatically declassified in December 2011, and that the continued application of  
2 FOIA Exemption (b)(1) remains warranted and appropriate. *See* Declaration of David M. Hardy  
3 (Hardy Decl.), ¶¶ 4-5 (Attached hereto as Exhibit A).

4 Under the FOIA, 5 U.S.C. § 552(b)(1) exempts from disclosure those records that are:

5 (A) specifically authorized under criteria established by an Executive Order to be kept secret in  
6 the interest of national defense or foreign policy; (B) are in fact properly classified pursuant to  
7 such Executive Order . . . .”

8 As noted by the Court, section 3.3 of E.O. 13526 reads in relevant part:

9 Automatic Declassification. (a) Subject to paragraphs (b)-(d) and (g)-(j) of this section, all  
10 classified records that (1) are more than 25 years old and (2) have been determined to have  
11 permanent historical value under title 44, United States Code, shall be automatically  
12 declassified whether or not the records have been reviewed. All classified records shall be  
13 automatically declassified on December 31 of the year that is 25 years from the date of origin,  
14 except as provided in paragraphs (b)-(d) and (g)-(j) of this section. If the date of origin of an  
15 individual record cannot be readily determined, the date of original classification shall be used  
16 instead.

17 E.O. 13526 § 3.3(a). Section 3.3(b) lays out numerous exceptions to the automatic declassification  
18 provision. The documents at issue here were classified in 1984 and shall remain classified as set  
19 forth in Exhibit 1 to the Hardy Declaration. Hardy Decl. ¶ 5.

20 Pursuant to Civil L.R. 7-11 and 79-5, Defendants renew seeking leave of Court to present  
21 classified Exhibit 1 to the Declaration of David M. Hardy in camera and under seal to the Court in  
22 support of their February 14, 2000 Motion for Summary Judgment, in response to the Court’s  
23 August 10, 2009 Civil Pretrial Minute Order directing further briefing from the parties, and in  
24 response to the Court’s August 25, 2011 Order Re Further Submissions.

25 The in camera exhibit will address why the requested documents remain exempt from  
26 disclosure under the FOIA. The Defendants last made an *ex parte* request to file a declaration  
27 under seal in November 2009, and such request remains pending. The underlying classified  
28 documents referenced in the in camera exhibit will be stored in a secure facility and will also be  
made available for the Court’s in camera review upon request. *See* 28 C.F.R. § 17.46.

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