

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' LODGING OF MATERIAL  
EX PARTE AND IN CAMERA**

ATTACHMENT 3

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 )  
ASIM GHAFOR, a U.S. Citizen and )  
Attorney at Law, )

NO: CV-06-27 4-KI

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

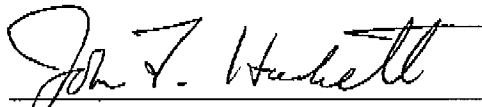
poses the substantial risk that our adversaries will be able to piece together sensitive information from other sources. Public, widespread access to this classified document would essentially facilitate the study of this document by those who would do us harm.

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.