

PETER D. KEISLER  
 Assistant Attorney General, Civil Division  
 CARL J. NICHOLS  
 Deputy Assistant Attorney General  
 JOSEPH H. HUNT  
 Director, Federal Programs Branch  
 ANTHONY J. COPPOLINO  
 Special Litigation Counsel  
[tony.coppolino@usdoj.gov](mailto:tony.coppolino@usdoj.gov)  
 ANDREA GACKI  
[andrea.gacki@usdoj.gov](mailto:andrea.gacki@usdoj.gov)  
 ANDREW H. TANNENBAUM  
[andrew.tannenbaum@usdoj.gov](mailto:andrew.tannenbaum@usdoj.gov)  
 Trial Attorneys  
 U.S. Department of Justice  
 Civil Division, Federal Programs Branch  
 20 Massachusetts Avenue, NW  
 Washington, D.C. 20001  
 Phone: (202) 514-4782/(202) 514-4263/(202) 514-4336  
 Fax: (202) 616-8460/(202) 616-8202/(202) 318-2461

KARIN J. IMMERGUT, OSB# 96314  
 United States Attorney  
 District of Oregon  
 JAMES L. SUTHERLAND, OSB# 68160  
 Assistant United States Attorney  
 1000 SW Third Avenue, Suite 600  
 Portland, Oregon 97204-2902  
 Phone: (503) 727-1194  
 Fax: (503) 727-1117  
 Email: [jim.sutherland@usdoj.gov](mailto:jim.sutherland@usdoj.gov)  
*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 FOR AN  
 EXTENSION OF TIME TO RESPOND  
 BOTH TO THE COMPLAINT AND TO  
 PLAINTIFFS' MOTION TO COMPEL**

### LOCAL RULE 7.1(a) CERTIFICATION

The parties have made a good faith effort to resolve this dispute. Defense counsel conferred with Plaintiffs' counsel by telephone on June 1, 2006. Plaintiffs' counsel were unable to provide their final position on this requested extension by the time Defense counsel believed they needed to file this motion for an extension of time.

### DEFENDANTS' MOTION FOR AN EXTENSION OF TIME

Defendants President George W. Bush, *et al.*, through undersigned counsel, hereby move for an extension of one week to respond to the Complaint, and for an extension of eleven days to respond to Plaintiffs' Motion to Compel, so that both of these responses will be due on the same day: June 16, 2006. Defendants intend to assert the state secrets privilege in response to both the Complaint and Plaintiffs' Motion to Compel and thus seek to consolidate those responses. In addition, Defendants are simultaneously responding to several deadlines in other challenges to the lawfulness of an intelligence-gathering program undertaken by the National Security Agency. Moreover, this short extension will not prejudice Plaintiffs or unduly delay proceedings in this case since other pending preliminary motions have not yet been resolved and may be relevant to future filings.

### BACKGROUND

1. Plaintiffs' Complaint in this action principally challenges the lawfulness of, and seeks to permanently enjoin, an intelligence-gathering program undertaken by the National Security Agency and described by the President in December 2005 as essential to detecting the threat of foreign terrorist attacks on the United States (the "Terrorist Surveillance Program"). *See* Compl. (Feb. 28, 2006) [Docket No. 1].

2. Defendants' response to the Complaint is presently due on June 9, 2006.

See Minutes of Telephone Conference (Apr. 7, 2006) [Docket No. 22].

3. Plaintiffs also served written discovery on Defendants on April 10, 2006, to which Defendants timely objected on May 10, 2006, asserting, *inter alia*, the state secrets privilege. See Pls.' Motion to Compel, at 2 (May 22, 2006) [Docket Nos. 35 & 36].

4. On May 22, 2006, Plaintiffs moved to compel responses to their First Set of Interrogatories, arguing *inter alia* that if Defendants intend to formally invoke the state secrets privilege, they must present "the required affidavits by their department heads," which they have not yet done. See *id.* at 5.

5. The Local Rules indicate that Defendants' response to Plaintiffs' Motion to Compel is due on June 5, 2006. See Fed. R. Civ. P. 6(a) & (e); Local Rule 7.1(g).

6. Currently pending before the Court are (i) the Oregonian's Motion to Unseal Records and all related briefs, see Docket Nos. 7, 8, 24, 25, 30, 32, 33, 34, 37 & 38, and (ii) Defendants' Motion to Prevent Plaintiffs' Access to the Sealed Classified Document (May 26, 2006) [Docket Nos. 39 & 40].

7. Further, Defendants will submit another motion related to discovery sought by Plaintiffs, as Defendants will soon file a motion for a protective order pursuant to Fed. R. Civ. P. 26(c) to quash the deposition of Barbara C. Hammerle, Acting Director, Office of Foreign Assets Control, U.S. Department of Treasury. Plaintiffs have noticed Ms. Hammerle's deposition for June 12, 2006.

### **ARGUMENT**

Defendants intend to assert the state secrets privilege both in response to the Complaint and to Plaintiffs' Motion to Compel. In light of the duplication of these matters, and the pressing workload described below, Defendants seek leave that their responses to the Complaint and to

Plaintiffs' Motion to Compel be consolidated and extended to June 16, 2006.

Since this case began, the Defendants have had to brief several preliminary motions and issues, in addition to preparing a response to the Complaint. Defendants have briefed an opposition to the Oregonian's Motion to Unseal Records and have also filed a Motion to Prevent Plaintiffs' Access to the Sealed Classified Document. Briefing on the Oregonian's motion, which involved two rounds of submissions to address the matter, was completed on May 25, 2006, and Defendants previously submitted briefs on this issue on April 14, 2006, on May 12, 2006, and on May 25, 2006. Briefing on the issue of Plaintiffs' continued access to the sealed classified document is ongoing. Defendants filed that motion on May 26, 2006, and Plaintiffs' response is due on June 20, 2006, with Defendants' reply due on June 30, 2006. As noted, Defendants will also soon be moving for a protective order to quash the deposition of the Acting Director of the Office of Foreign Assets Control, which Plaintiffs noticed for June 12, 2006.

While addressing these matters, the Government has been simultaneously defending the Terrorist Surveillance Program as challenged in other cases, and briefing in those cases will continue throughout the month of June. On May 13, 2006, the United States moved to intervene and filed a motion to dismiss or for summary judgment asserting the state secrets privilege in *Hepting, et al. v. AT&T, et al.*, Civil Action No. 06-672 (N.D. Cal.) (VRW). The United States has a reply brief due in that action on June 16, 2006, with a hearing date set for June 23, 2006. On May 26, 2006, the Government filed a motion to dismiss or for summary judgment asserting the state secrets privilege in both *Center for Constitutional Rights, et al. v. Bush, et al.*, Civil Action No. 06-313 (S.D.N.Y.) (GEL), and *American Civil Liberties Union v. National Security Agency, et al.*, Civil Action No. 06-10204 (E.D. Mich.) (ADT). An initial hearing is set in the *ACLU* case in Detroit on June 12, 2006. Under present scheduling in the *Center for*

*Constitutional Rights* case in New York, a reply brief by the United States would be due on June 19, 2006. Additional briefing in both of those cases is likely during June.

In addition to meeting these competing deadlines, the assertion of the state secrets privilege in this case — which allows the government to protect certain information when disclosure would be inimical to the national security, *see, e.g., Kasza v. Browner*, 133 F.3d 1159, 1165 (9<sup>th</sup> Cir.), *cert. denied*, 525 U.S. 967 (1998) — would have to be made by the head of the agency with control over the matter after actual personal consideration by that officer, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953). Defendants require a brief additional amount of time to complete deliberations on the foregoing and prepare a response to the Complaint as well as to Plaintiffs’ Motion to Compel, which puts at issue specific categories of information sought through Plaintiffs’ First Set of Interrogatories.

In sum, as should be apparent, Defendants are juggling multiple lawsuits on the same topic with several deadlines near in time and seek to reconcile these deadlines as much as reasonably possible given the significance and demands of all these cases. Given the volume of Terrorist Surveillance Program-related litigation, and the senior-level review required for the significant issues raised, Defendants respectfully request that the Court grant them additional time to prepare a response to the Complaint and to Plaintiffs’ Motion to Compel in this case, as the Government also considers and prepares its responses in the various other related cases described above. In particular, Defendants respectfully request that the Court extend to June 16, 2006, the date by which Defendants must file a consolidated response to the Complaint and Plaintiffs’ Motion to Compel. This extension will not prejudice further proceedings in this case, since other preliminary motions are still pending.

**CONCLUSION**

Defendants respectfully request that the Court extend to **June 16, 2006**, the date by which Defendants must file a consolidated response to the Complaint and Plaintiffs' Motion to Compel.

Dated: June 1, 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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ANTHONY J. COPPOLINO  
Special Litigation Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W. Room 6102  
Washington, D.C. 20001  
Telephone: (202) 514-4782  
Fax: (202) 616-8460  
[tony.coppolino@usdoj.gov](mailto:tony.coppolino@usdoj.gov)

*s/ Andrea Gacki*

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ANDREA GACKI  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W., Room 7334  
Washington, D.C. 20001  
Telephone: (202) 514-4336  
Fax: (202) 318-2461  
[andrea.gacki@usdoj.gov](mailto:andrea.gacki@usdoj.gov)

*s/ Andrew H. Tannenbaum*

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ANDREW H. TANNENBAUM  
Trial Attorney  
United States Department of Justice

Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W. Room 7332  
Washington, D.C. 20001  
Telephone: (202) 514-4263  
Fax: (202) 616-8202  
[andrew.tannenbaum@usdoj.gov](mailto:andrew.tannenbaum@usdoj.gov)

KARIN J. IMMERGUT, OSB# 96314  
United States Attorney  
District of Oregon

JAMES L. SUTHERLAND, OSB# 68160  
Assistant United States Attorney  
1000 SW Third Avenue, Suite 600  
Portland, Oregon 97204-2902  
Phone: (503) 727-1194  
Fax: (503) 727-1117  
Email: [jim.sutherland@usdoj.gov](mailto:jim.sutherland@usdoj.gov)

*Attorneys for the United States of America*