

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.

**DECLARATION OF JOHN D. NEGROPONTE,
DIRECTOR OF NATIONAL INTELLIGENCE**

I, John D. Negroponte, declare as follows:

INTRODUCTION

1. I am the Director of National Intelligence (DNI) of the United States. I have held this position since April 21, 2005. From June 28, 2004, until appointed to be DNI, I served as the United States Ambassador to Iraq. From September 18, 2001, until my appointment in Iraq, I served as the United States Permanent Representative to the United Nations. I have also served as Ambassador to Honduras (1981-1985), Mexico (1989-1993), the Philippines (1993-1996), and as Deputy Assistant to the President for National Security Affairs (1987-1989).

2. In the course of my official duties, I have been advised of this lawsuit and the allegations at issue in this case. The statements made herein are based on my personal knowledge, as well as on information provided to me in my official capacity as DNI, and on my personal evaluation of that information. In personally considering this matter, I have executed a separate classified declaration dated June 21, 2006, and lodged *in camera* and *ex parte* in this case. Moreover, I have read and personally considered the information contained in the *In Camera, Ex Parte* Declaration of Lieutenant General Keith B. Alexander, Director of the

National Security Agency, lodged in this case.

3. The purpose of this declaration is to formally assert, in my capacity as DNI and head of the United States Intelligence Community, the military and state secrets privilege (hereafter “state secrets privilege”), as well as a statutory privilege under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence information, sources and methods that are implicated by the allegations in this case. Disclosure of the information covered by these privilege assertions would cause exceptionally grave damage to the national security of the United States and, therefore, should be excluded from any use in this case. In addition, I concur with General Alexander’s conclusion that the risk is great that further litigation will lead to the disclosure of information harmful to the national security of the United States and, accordingly, this case should be dismissed. *See* Public and *In Camera* Alexander Declaration.

THE DIRECTOR OF NATIONAL INTELLIGENCE

4. The position of Director of National Intelligence was created by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of the Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the U.S. Intelligence Community and as the principal advisor to the President, the National Security Council, and the Homeland Security Council, for intelligence-related matters related to national security. *See* 50 U.S.C. § 403(b)(1), (2).

5. 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 Treasury, the Department of Energy, 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).

6. The responsibilities and authorities of the DNI are set forth in the National Security Act, 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 Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and determining, based on proposals submitted by heads of agencies and departments within the Intelligence Community, an annual consolidated budget for the National Intelligence Program for presentation to the President, and for ensuring the effective execution of the annual budget for intelligence and intelligence-related activities, and for managing and allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

7. In addition, the National Security Act of 1947, as amended, provides that “The Director of National Intelligence shall protect intelligence sources and methods from

unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive Orders, or other Presidential directives and access and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible for the establishment of uniform standards and procedures for the grant of access to Sensitive Compartmented Information (“SCI”) to any officer or employee of any agency or department of the United States, and for ensuring consistent implementation of those standards throughout such departments and agencies. *Id.* § 403-1(j)(1), (2).

8. By virtue of my position as the DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entity of the United States. Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me to exercise original TOP SECRET classification authority. My classified declaration, as well as the classified declaration of General Alexander on which I have relied in this case, are properly classified under § 1.3 of Executive Order 12958, as amended, because the public disclosure of the information contained in those declarations could reasonably be expected to cause serious damage to the foreign policy and national security of the United States.

ASSERTION OF THE STATE SECRETS PRIVILEGE

9. After careful and actual personal consideration of the matter, I have determined that the disclosure of certain information implicated by Plaintiffs’ claims—as set forth here and described in more detail in my classified declaration and in the classified declaration of General Alexander—would cause exceptionally grave damage to the national security of the United

States and, thus, must be protected from disclosure and excluded from this case. Thus, as to this information, I formally invoke and assert the state secrets privilege. In addition, it is my judgment that any attempt to proceed in the case will substantially risk the disclosure of the privileged information described briefly herein and in more detail in the classified declarations, and will cause exceptionally grave damage to the national security of the United States.

10. Through this declaration, I also invoke and assert a statutory privilege held by the DNI under the National Security Act to protect intelligence sources and methods implicated by this case. *See* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory privilege for intelligence information and sources and methods is coextensive with my state secrets privilege assertion.

INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE

11. My assertion of the state secrets and statutory privileges in this case pertains to four categories of information which are necessarily described in general, unclassified terms.

- (i) First, I assert privilege to protect against the disclosure of information regarding the specific nature of the al Qaeda threat.
- (ii) Second, I assert privilege to protect information regarding the Terrorist Surveillance Program.
- (iii) Third, I assert privilege with respect to information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program or under any other government program, specifically including information responsive to Plaintiffs' interrogatory requests numbers 1 to 20.
- (iv) Fourth, I assert privilege with respect to information pertaining to a sealed document before the Court, including information in response to Plaintiffs' interrogatory requests numbers 21-25.

My *In Camera*, *Ex Parte* Declaration describes these categories in further detail.

12. In an effort to counter the al Qaeda threat, the President of United States authorized the NSA to utilize its SIGINT capabilities to collect certain international communications originating or terminating in the United States where there are reasonable

grounds to conclude that one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization. This program, known as the Terrorist Surveillance Program (TSP), is designed to detect and prevent another terrorist attack on the United States. To disclose additional information regarding the nature of the al Qaeda threat or to discuss the TSP in any greater detail, however, would disclose classified intelligence information, sources, and methods, thereby enabling adversaries of the United States to avoid detection by the U.S. Intelligence Community and/or take measures to defeat or neutralize U.S. intelligence collection, posing a serious threat of damage to the United States' national security interests. Thus, any further elaboration on the public record concerning the al Qaeda threat or the TSP would reveal information that would cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declaration of General Alexander that I considered in making this privilege assertion, as well as my own separate classified declaration, provide a more detailed explanation of the information at issue and the harms to the national security that would result from its disclosure.

13. Plaintiffs also make allegations regarding whether they have been subject to surveillance by the NSA. The United States can neither confirm nor deny allegations concerning intelligence activities, sources, methods, or targets. The harm of revealing targets of foreign intelligence surveillance should be obvious. If an individual knows or suspects he is a target of U.S. intelligence activities, he would naturally tend to alter his behavior to take new precautions against surveillance, thereby compromising valuable intelligence collection. Also, confirming or denying whether a particular person is subject to surveillance would tend to reveal intelligence information, sources, and methods that are at issue in the surveillance, thus compromising those methods and severely undermining surveillance activities in general. Even

confirming that individuals are *not* the target of intelligence activities would cause harm to the national security for other reasons as well. For example, if the government were to confirm in this case and others that specific individuals are not targets of surveillance, but later refused to comment (as it would have to) in a case involving an actual target, a person could easily deduce by comparing such responses that the person in the latter case is a target. Confirming that individuals are not targets of surveillance would also tend to reveal critical intelligence sources and methods. For example, identifying who is not under surveillance would provide insight into the scope of government surveillance on a particular matter, reveal directly to that individual that they have avoided surveillance and may communicate freely if they wish to act against U.S. interests, and also identify for others an individual who might be a secure channel of communications. Thus, as a matter of course, the NSA cannot publicly confirm or deny whether *any* individual is subject to surveillance, because to do so would tend to reveal actual targets, sources, and methods. As with the other categories of information discussed in this declaration, any further elaboration on the public record concerning these matters would reveal information that would cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declaration of General Alexander that I considered in making this privilege assertion, as well as my own separate classified declaration, provide a more detailed explanation of the information at issue, the reasons why it is implicated by Plaintiffs' claims, and the harms to national security that would result from its disclosure.

14. Finally, I also assert a claim of state secrets and statutory privilege with respect to information contained in and pertaining to the sealed document filed in this case. This document was the subject of the Declaration of John F. Hackett, Director, Information Management Office, Office of the Director of National Intelligence, in connection with a motion before this Court to unseal the document. I have personally reviewed the matter raised by Mr. Hackett's declaration,

including the document itself. I hereby concur in Mr. Hackett's findings, also set forth in other *in camera* submissions concerning the document, that the document remains properly classified, cannot be declassified, and that any further disclosure would cause exceptionally grave harm to national security, notwithstanding the fact that the document was inadvertently disclosed to the Plaintiffs in this case in connection with a Treasury Department proceeding. Such unauthorized disclosures do not determine whether state secrets should be protected where there would be further harm to national security if they are not excluded under the privilege. I specifically concur that the information in the document should remain protected from disclosure and, upon personal consideration, assert privilege in order to exclude this document from further proceedings in this case. My *In Camera* Declaration discusses this issue further.

CONCLUSION


15. In sum, I formally assert the state secrets privilege, as well as a statutory privilege under the National Security Act, 50 U.S.C. § 403-1(i)(1), to prevent the disclosure of:

(i) information regarding the specific nature of the al Qaeda threat; (ii) information regarding the Terrorist Surveillance Program; (iii) information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program or under any other government program, specifically including information responsive to Plaintiffs' interrogatory requests; and (iv) information pertaining to a sealed document before the Court, also including information responsive to Plaintiffs' interrogatory requests. These matters, and the grave harm to the national security that would follow from the disclosure of information regarding them, are detailed in the two classified declarations that are available for the Court's *in camera* and *ex parte* review. Moreover, because proceedings in this case risk disclosure of privileged and classified intelligence-related information, I join with General Alexander in respectfully requesting that the Court dismiss this case to stem the harms to the

national security of the United States that will occur if it is litigated.

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

DATE: 6/21/2006



JOHN D. NEGROPONTE
Director of National Intelligence