

Exhibit A

1 JOSEPH H. HUNT
Assistant Attorney General
2 DAVID L. ANDERSON
United States Attorney
3 ANTHONY J. COPPOLINO
Deputy Branch Director
4 JULIA A. HEIMAN
Senior Counsel
5 CHRISTOPHER HEALY
Trial Attorney
6 United States Department of Justice
7 Civil Division, Federal Programs Branch

8
9 P.O. Box 883
Washington, D.C. 20044
10 Telephone: (202) 616-8480
Facsimile: (202) 616-8470
11 Email: julia.heiman@usdoj.gov

12 Attorneys for Defendants the Attorney General, *et al.*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 _____)
16 TWITTER, INC.,)

17 Plaintiff,)

18)
19 v.)

20 WILLIAM P. BARR, United States)
21 Attorney General, *et al.*,)

22 Defendants.)
23 _____)

Case No. 14-cv-4480-YGR

**DECLARATION OF
WILLIAM P. BARR,
ATTORNEY GENERAL
OF THE UNITED STATES**

Hon. Yvonne Gonzalez Rogers

24
25 I, William P. Barr, hereby state and declare as follows:

26 1. I am the Attorney General of the United States and the head of the United States
27 Department of Justice (“DOJ” or “the Department”), an Executive Department of the United
28 States. *See* 28 U.S.C. §§501, 503, 509. The purpose of this declaration is to assert, at the request

1 of the Federal Bureau of Investigation (“FBI”), and in my capacity as the Attorney General and
2 head of DOJ, a formal claim of the state secrets privilege in order to protect the national security
3 interests of the United States. The statements made herein are based on my personal knowledge,
4 on information provided to me in my official capacity, and on my evaluation of that information.

5 2. In the course of my official duties, I have been informed that the plaintiff in this
6 action, Twitter Inc. (“Twitter”), has brought First Amendment claims challenging the
7 Government’s determination that Twitter’s draft Transparency Report cannot be published
8 because it contains information regarding Twitter’s receipt of national security legal process that
9 is properly classified. I understand that following the submission of Twitter’s Second Amended
10 Complaint, the Government filed a motion for summary judgment in this matter supported by the
11 Classified Declaration of the Executive Assistant Director (“EAD”) of the FBI, Michael
12 Steinbach (the “Classified Steinbach Declaration”), after the Court had indicated that the
13 Government should include with its summary judgment motion an *ex parte* presentation in
14 support of its motion, or risk being precluded from making such a submission later. I
15 understand, further, that the Classified Steinbach Declaration was submitted for the solely for the
16 Court’s *ex parte, in camera* review.

17 3. I have read and carefully considered the public and classified declarations of
18 Michael C. McGarrity (“McGarrity Declaration”), Acting Executive Assistant Director of the
19 National Security Branch of the FBI and have reviewed the Classified Steinbach Declaration and
20 certain other filings and court orders relevant to this matter. After careful and actual personal
21 consideration of the matter, I have concluded that disclosure of the four categories of information
22 described below and in more detail in the classified McGarrity Declaration could reasonably be
23 expected to cause significant harm to the national security, and I therefore formally assert the
24 state secrets privilege over this information. The classified McGarrity Declaration, which is
25 available for the Court’s *ex parte, in camera* review, describes in classified detail the information
26 over which I am asserting the state secrets privilege. As Attorney General, I possess original
27 classification authority under Section 1.3 of Executive Order 13526, dated December 29, 2009.
28 *See* 75 Fed. Reg. 707. The classified McGarrity Declaration is properly classified under Section

1 1.2 of Executive Order 13526 because disclosure of the information contained in that declaration
2 also could reasonably be expected to cause significant harm to national security.

3 4. In unclassified terms, my privilege assertion encompasses the following
4 categories of sensitive national security information that appear in the Classified Steinbach
5 Declaration:

- 6 (i) **Information Regarding National Security Legal Process that Has Been**
7 **Served on Twitter:** Information regarding national security legal process that
8 has been served on Twitter, including not only the quantity and type of any such
9 process, but also particular information regarding the subject matter of certain FBI
10 national security investigations as well as the communications targeted with
11 national security legal process.
12 (ii) **Information Regarding How Adversaries May Seek to Exploit Information**
13 **Reflecting the Government's Use of National Security Legal Process.**
14 Information describing how adversaries might exploit provider-specific data
15 regarding receipt of national security legal process, both with respect to Twitter
16 and with respect to any other provider.
17 (iii) **Information Regarding the Government's Investigative and Intelligence**
18 **Collection Capabilities.** Information that would reveal or tend to reveal the
19 Government's collection capabilities.
20 (iv) **Information Concerning the FBI's Investigation of Adversaries and**
21 **Awareness of their Activities.** Information revealing specific targets of
22 investigation and activities of adversaries of the United States.

23 5. As indicated above and explained further below, I have determined that disclosure
24 of information falling into the foregoing categories could reasonably be expected to cause
25 significant harm to national security.

26 6. First, I agree with the FBI's assessment that disclosure of classified information
27 regarding national security legal process that has been served on Twitter reasonably could be
28 expected to cause significant harm to national security. My privilege assertion encompasses both
types of information in this category—(i) particular information regarding the subject matter of
certain FBI national security investigations and communications targeted with national security
legal process, and (ii) detail regarding the quantity of national security legal process that Twitter
has received. For reasons stated in the FBI's classified declaration, the disclosure of such
information reasonably could be expected to cause serious damage to national security.

1 7. In particular, I agree with the FBI that the disclosure of details regarding the
2 quantity of national security legal process that Twitter has received reasonably could be expected
3 to cause significant harm to national security. As the FBI explained, such information would
4 reveal or tend to reveal information about the extent, scope, and reach of the Government's
5 national security collection capabilities and investigative interests. The disclosure of such
6 information, as the FBI explained, would allow adversaries of the United States, including
7 current and future targets of FBI national security investigations, significant insight into the U.S.
8 Government's counterterrorism and counterintelligence efforts and capabilities, or, significantly,
9 the lack thereof; and into particular intelligence sources and methods.

10 8. As the FBI explained, by detailing the amount of each particular type of process
11 Twitter had received during a particular period, and over time, this data would reveal the extent
12 to which Twitter was or was not a safe channel of communication for our adversaries. The
13 Director of National Intelligence ("DNI") declassified certain aggregate data formats reflecting
14 the Government's use of national security legal process in order to permit public reporting by
15 recipients of such process in a manner that would increase transparency while minimizing harm
16 to national security. However, as the FBI explained, the disclosure of data regarding the receipt
17 of national security legal process by Twitter that is more granular than that which has been
18 declassified by the DNI would reveal such information as: (i) incremental increases or decreases
19 in collection, which would show whether the Government has a significant presence or
20 investigative focus on a particular platform; (ii) the collection of content or non-content
21 information, which would show whether and to what extent the Government is collecting certain
22 types of information on that platform; and (iii) the fact of whether or when the recipient received
23 a particular type of process at all, which may reflect different collection capabilities and focus on
24 that platform, different types of information collected, and locations of FBI targets. Additional
25 details concerning why disclosure of information in this category reasonably could be expected
26 to cause serious damage to national security are set forth in the FBI's classified declaration.

27 9. Second, I concur with the FBI's determination that the disclosure of details of
28 how adversaries might exploit provider-specific data regarding receipt of national security legal

1 process, both with respect to Twitter and with respect to any other provider, reasonably could be
2 expected to cause significant harm to national security. I agree with the FBI's judgment that,
3 because the information within this category could be used to draw inferences from provider-
4 specific data about the Government's collection efforts and guide adversaries to sophisticated
5 strategies to employ in their activities against the Intelligence Community, its disclosure
6 reasonably could be expected to cause serious damage to the national security.

7 10. Third, I agree with the FBI that disclosure of information that would reveal or
8 tend to reveal the Government's collection capabilities reasonably could be expected to cause
9 significant harm to national security. As the FBI explained, particularly where there are multiple
10 communication options to choose from and additional services that may come on the market, if
11 adversaries are able to discern the Government's collection capabilities and deduce which
12 platforms are safest for their communications, they can reasonably be expected to leave
13 platforms where the Government has collection capability in favor of the "safe" communications
14 channels, likely resulting in a loss of intelligence. The specific information that falls into this
15 category, and further reasons why its disclosure reasonably could be expected to cause serious
16 damage to national security, are set forth in the FBI's classified declaration.

17 11. Fourth, I agree with the FBI's determination that disclosure of information
18 revealing specific targets of investigation and activities of adversaries of the United States
19 reasonably could be expected to cause significant harm to national security. As the FBI
20 explained, the particularized descriptions of these targets and activities contained in the
21 Classified Steinbach Declaration reveal not only the Government's awareness of the activity
22 described in each instance, but, more importantly, would disclose to adversaries that those
23 activities were subject to Government surveillance as well as the Government's intelligence
24 sources and methods used to acquire that information.

25 12. In particular, as the FBI noted, the disclosure of the identities of investigative
26 targets would alert those targets to the Government's interest in their activities and cause them to
27 alter their conduct to avoid detection of their future activities, which would seriously impede
28 efforts to gain further intelligence on their activities. Similarly, as the FBI further explained, the

1 disclosure of information that would tend to describe, reveal, confirm or deny the existence or
2 use of sources and methods of surveillance would again enable a subject to evade detection and,
3 more generally, provide insights into how the Government undertakes investigations – and
4 thereby damage future investigations that might rely on similar methods. I agree with the FBI’s
5 assessment that either outcome reasonably could be expected to cause serious or exceptionally
6 grave damage to national security by denying the United States access to information crucial to
7 the defense of the United States both at home and abroad.

8 13. Finally, I have determined that the foregoing categories of information should be
9 protected from disclosure in this litigation pursuant to this privilege assertion regardless of the
10 fact that counsel for Twitter has completed one aspect of the security clearance process, a
11 favorable background investigation. As the FBI explains, the detailed, comprehensive, and
12 highly classified information in EAD Steinbach’s classified declaration was intended solely for
13 the Court’s *ex parte, in camera* review, and the disclosure of such information to private counsel
14 in civil actions such as this reasonably could be expected to risk or result in inadvertent,
15 involuntary, or intentional disclosures that could cause serious, or in some cases, exceptionally
16 grave damage to national security. I therefore assert the state secrets privilege over that
17 classified declaration in my capacity as the head of the Department of Justice and thereby
18 formally object to its disclosure to Plaintiff’s counsel.


19 14. Any further elaboration on the public record concerning the four categories of
20 classified national security information at issue here, and the harm that reasonably could be
21 expected from their disclosure, would reveal information that could cause the very harms my
22 assertion of the state secrets privilege is intended to prevent. The classified McGarrity
23 Declaration, submitted for *ex parte, in camera* review, provides a more detailed explanation of
24 the information over which I am asserting the privilege and the harms to national security that
25 reasonably could be expected to result from disclosure of that information.

26 15. Under the *Attorney General’s Policies and Procedures Governing Invocation of*
27 *the State Secrets Privilege* (Sept. 23, 2009) (“State Secrets Guidance”), the Department of Justice
28 will defend an assertion of the state secrets privilege in litigation, and seek dismissal of a claim

1 on that basis, only when “necessary to protect against the risk of significant harm to national
2 security.” See Exhibit 1 (State Secrets Guidance), ¶ 1(A). The policy provides further that an
3 application of a privilege assertion must be narrowly tailored and that dismissal be sought
4 pursuant to the privilege assertion only when necessary to prevent significant harm to national
5 security. *Id.* ¶ 1(B). Moreover, “[t]he Department will not defend an invocation of the privilege
6 in order to: (i) conceal violations of the law, inefficiency, or administrative error; (ii) prevent
7 embarrassment to a person, organization, or agency of the United States government;
8 (iii) restrain competition; or (iv) prevent or delay the release of information the release of which
9 would not reasonably be expected to cause significant harm to national security.” *Id.* ¶ 1(C). The
10 policy also establishes detailed procedures for review of a proposed assertion of the state secrets
11 privilege in a particular case. *Id.* ¶ 2. Those procedures require submissions by the relevant
12 government departments or agencies specifying “(i) the nature of the information that must be
13 protected from unauthorized disclosure; (ii) the significant harm to national security that
14 disclosure can reasonably be expected to cause; [and] (iii) the reason why unauthorized
15 disclosure is reasonably likely to cause such harm.” *Id.* ¶ 2(A). Based on my personal
16 consideration of the matter, I have determined that the requirements for an assertion and defense
17 of the state secrets privilege have been met in this case in accord with the Department’s State
18 Secrets Guidance.

19
20 I declare under penalty of perjury that the foregoing is true and correct. ^

21 Executed on this 15th day of March, 2019.

22
23 
24 WILLIAM P. BARR
25 Attorney General of the United States
26
27
28