

1 Agency Act of 1959, Public Law No. 86-36 (codified as a note to 50 U.S.C. § 402) (“NSA Act”),
2 to protect the information related to NSA activities described below. The statements made
3 herein are based on my personal knowledge of NSA activities and operations, and on
4 information available to me as Director of the NSA.

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6 3. In the course of my official duties, I have been advised of this litigation and the
7 allegations in the Plaintiffs’ Amended Complaint. As summarized herein and described further
8 in my classified declaration submitted for the Court’s *in camera*, *ex parte* review, various
9 classified facts related to the Plaintiffs’ claims are subject to the DNI’s state secrets and statutory
10 privilege assertions, as well as to my assertion of the NSA’s statutory privilege. The disclosure
11 of this information, which relates to NSA intelligence information, activities, sources, and
12 methods, reasonably could be expected to cause exceptionally grave damage to the national
13 security of the United States. Accordingly, as set forth further below and in my classified
14 declaration, it is my judgment that information described in these declarations should be
15 protected from disclosure. In addition, it is my judgment that sensitive state secrets are so central
16 to the subject matter of the litigation that any attempt to proceed in the case risks the disclosure
17 of the secrets described herein and in my classified declaration and, thus, exceptionally grave
18 damage to the national security of the United States.

19 20 21 **BACKGROUND**

22 **A. The National Security Agency**

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24 4. The NSA was established by Presidential Directive in 1952 as a separately
25 organized agency within the Department of Defense. Under Executive Order 12333, § 1.12(b),
26 as amended, the NSA’s cryptologic mission includes three functions: (1) to collect, process, and
27 disseminate signals intelligence (SIGINT) information, of which COMINT is a significant
28 subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c)

1 the support of military operations; (2) to conduct information security activities; and (3) to
2 conduct operations security training for the U.S. Government.

3 5. There are two primary reasons for gathering and analyzing foreign intelligence
4 information. The first, and most important, is to gain information required to direct U.S.
5 resources as necessary to counter external threats. The second reason is to obtain information
6 necessary to the formulation of U.S. foreign policy. Foreign intelligence information provided
7 by the NSA is thus relevant to a wide range of important issues, including military order of
8 battle; threat warnings and readiness; arms proliferation; international terrorism; and foreign
9 aspects of international narcotics trafficking.
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11 **B. September 11, 2001 and the al Qaeda Threat.**

12 6. On September 11, 2001, the al Qaeda terrorist network launched a set of
13 coordinated attacks along the East Coast of the United States. Four commercial jetliners, each
14 carefully selected to be fully loaded with fuel for a transcontinental flight, were hijacked by al
15 Qaeda operatives. Those operatives targeted the Nation's financial center in New York with two
16 of the jetliners, which they deliberately flew into the Twin Towers of the World Trade Center.
17 Al Qaeda targeted the headquarters of the Nation's Armed Forces, the Pentagon, with the third
18 jetliner. Al Qaeda operatives were apparently headed toward Washington, D.C. with the fourth
19 jetliner when passengers struggled with the hijackers and the plane crashed in Shanksville,
20 Pennsylvania. The intended target of this fourth jetliner was most evidently the White House or
21 the Capitol, strongly suggesting that al Qaeda's intended mission was to strike a decapitation
22 blow to the Government of the United States—to kill the President, the Vice President, or
23 Members of Congress. The attacks of September 11 resulted in approximately 3,000 deaths—
24 the highest single-day death toll from hostile foreign attacks in the Nation's history. In addition,
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1 these attacks shut down air travel in the United States, disrupted the Nation's financial markets
2 and government operations, and caused billions of dollars of damage to the economy.

3 7. On September 14, 2001, the President declared a national emergency "by reason
4 of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and
5 the continuing and immediate threat of further attacks on the United States." Proclamation No.
6 7463, 66 Fed. Reg. 48199 (Sept. 14, 2001). The United States also immediately began plans for
7 a military response directed at al Qaeda's training grounds and haven in Afghanistan. On
8 September 14, 2001, both Houses of Congress passed a Joint Resolution authorizing the
9 President "to use all necessary and appropriate force against those nations, organizations, or
10 persons he determines planned, authorized, committed, or aided the terrorist attacks" of
11 September 11. Authorization for Use of Military Force, Pub. L. No. 107-40 § 21(a), 115 Stat.
12 224, 224 (Sept. 18, 2001) ("Cong. Auth."). Congress also expressly acknowledged that the
13 attacks rendered it "necessary and appropriate" for the United States to exercise its right "to
14 protect United States citizens both at home and abroad," and acknowledged in particular that
15 "the President has authority under the Constitution to take action to deter and prevent acts of
16 international terrorism against the United States." *Id.* pmb1.

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20 8. As the President made clear at the time, the attacks of September 11 "created a
21 state of armed conflict." Military Order, § 1(a), 66 Fed. Reg. 57833, 57833 (Nov. 13, 2001).
22 Indeed, shortly after the attacks, NATO took the unprecedented step of invoking article 5 of the
23 North Atlantic Treaty, which provides that an "armed attack against one or more of [the parties]
24 shall be considered an attack against them all." North Atlantic Treaty, Apr. 4, 1949, art. 5, 63
25 Stat. 2241, 2244, 34 U.N.T.S. 243, 246. The President also determined that al Qaeda terrorists
26 "possess both the capability and the intention to undertake further terrorist attacks against the
27 United States that, if not detected and prevented, will cause mass deaths, mass injuries, and
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1 massive destruction of property, and may place at risk the continuity of the operations of the
2 United States Government,” and he concluded that “an extraordinary emergency exists for
3 national defense purposes.” Military Order, § 1(c), (g), 66 Fed. Reg. at 57833-34.

4 9. As a result of the unprecedented attacks of September 11, 2001, the United States
5 found itself immediately propelled into a worldwide war against a network of terrorist groups,
6 centered on and affiliated with al Qaeda, that possesses the evolving capability and intention of
7 inflicting further catastrophic attacks on the United States. That war is continuing today, at
8 home as well as abroad. Moreover, the war against al Qaeda and its allies is a very different kind
9 of war, against a very different enemy, than any other war or enemy the Nation has previously
10 faced. Al Qaeda and its supporters operate not as a traditional nation-state but as a diffuse,
11 decentralized global network of individuals, cells, and loosely associated, often disparate groups,
12 that act sometimes in concert, sometimes independently, and sometimes in the United States, but
13 always in secret—and their mission is to destroy lives and to disrupt a way of life through
14 terrorist acts. Al Qaeda works in the shadows; secrecy is essential to al Qaeda’s success in
15 plotting and executing its terrorist attacks.

16 10. Accordingly, after the September 11 attacks, the President directed the NSA to
17 detect and prevent al Qaeda-related terrorist attacks within the United States by intercepting the
18 content¹ of telephone and Internet communications for which there were reasonable grounds to
19 believe that (1) such communication originated or terminated outside the United States, and (2) a
20 party to such communication was a member or agent of al Qaeda or an affiliated terrorist
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28 ¹ The term “content” is used herein to refer to the substance, meaning, or purport of a communication, as defined in 18 U.S.C. § 2510(8).

1 organization (hereafter referred to as the "Terrorist Surveillance Program" or "TSP"). The
2 President acknowledged the existence of this program in December 2005.²

3 **INFORMATION SUBJECT TO ASSERTIONS OF PRIVILEGE**

4 11. I understand that the Plaintiffs in this lawsuit allege that the NSA conducts a
5 "dragnet" surveillance program involving the interception of "virtually every telephone, internet
6 and/or email communication that has been sent from or received within the United States since
7 2001." Amended Compl. ¶¶ 1, 4. I also understand that the Plaintiffs allege that the content of
8 their own telephone and Internet communications were subject to "unlawful interception, search
9 and seizure, and electronic surveillance," in connection with the alleged "dragnet" program.
10 *Id.* ¶ 87. I further understand that the Plaintiffs allege (1) that they are customers of Verizon
11 and/or AT&T, and (2) that those companies participate in the content surveillance dragnet that
12 Plaintiffs allege. *See id.* ¶¶ 5-8.

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15 12. As set forth further below, the following categories of information are subject to
16 the DNI's assertion of the state secrets and statutory privileges, as well as my assertion of the
17 NSA statutory privilege, and this information should be protected from disclosure in this matter:
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- 19 A. Information that may tend to confirm or deny whether the
20 Plaintiffs have been subject to any alleged NSA
21 intelligence activity that may be at issue in this matter; and
22 B. Information concerning NSA intelligence activities,
23 sources, or methods, including:
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25 ² On January 17, 2007, the Attorney General made public the general facts that new
26 orders of the Foreign Intelligence Surveillance Court had been issued that authorized the
27 Government to target for collection international communications into or out of the United States
28 where there is probable cause to believe that one of the communicants is a member or agent of al
Qaeda or an associated terrorist organization; that, as a result of these orders, any electronic
surveillance that was occurring as part of the TSP is now being conducted subject to the approval
of the FISA Court; and that, under these circumstances, the President determined not to
reauthorize the TSP.

1 (1) Information concerning the scope and operation of the
2 Terrorist Surveillance Program, including information that
3 may be needed to demonstrate that the TSP was limited to
4 one-end foreign al Qaeda-related communications and that
5 the NSA does not otherwise engage in the content
6 surveillance dragnet that the Plaintiffs allege; and

7 (2) Any other information concerning NSA intelligence
8 activities, sources, or methods that would be necessary to
9 adjudicate the Plaintiffs' claims, including, to the extent
10 applicable, information that would tend to confirm or deny
11 whether the NSA collects large quantities of
12 communication records information; and

13 C. Information that may tend to confirm or deny whether
14 Verizon/MCI, AT&T, or any other telecommunications
15 carrier has assisted the NSA with the alleged intelligence
16 activities.

17 HARM OF DISCLOSURE

18 13. As set forth in my classified declaration submitted for the Court's *in camera, ex*
19 *parte* review, disclosure of information in the foregoing categories would cause exceptionally
20 grave harm to national security. I briefly summarize the harms at issue below.

21 14. The first major category of information as to which I am supporting the DNI's
22 assertion of privilege, and asserting the NSA's own statutory privilege, concerns information as
23 to whether particular individuals, including the Plaintiffs in this lawsuit, have been subject to
24 alleged NSA intelligence activities. Disclosure of information that would tend to confirm or
25 deny whether or not certain individuals have been subject to NSA intelligence activities would
26 cause exceptionally grave harm to the national security. As a matter of course, the NSA cannot
27 publicly confirm or deny whether any individual is subject to surveillance activities because to
28 do so would tend to reveal actual targets. For example, if the NSA were to confirm in this case
and others that specific individuals are not targets of surveillance, but later refuse 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. The harm of revealing targets of

1 foreign intelligence surveillance should be obvious. If an individual knows or suspects he is a
2 target of U.S. intelligence activities, he would naturally tend to alter his behavior to take new
3 precautions against surveillance. In addition, revealing who is not a target would indicate who
4 has avoided surveillance and who may be a secure channel for communication. Such
5 information could lead a person, secure in the knowledge that he is not under surveillance, to
6 help a hostile foreign adversary convey information; alternatively, such a person may be
7 unwittingly utilized or even forced to convey information through a secure channel. Revealing
8 which channels are free from surveillance and which are not would also reveal sensitive
9 intelligence methods and thereby could help any adversary evade detection.
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11 15. Second, I am supporting the DNI's assertion of privilege and asserting the NSA's
12 statutory privilege over any other facts concerning NSA intelligence sources and methods that
13 would be needed to adjudicate this case. This includes: (1) facts concerning the operation of the
14 Terrorist Surveillance Program and any other NSA intelligence activities needed to demonstrate
15 that the TSP was limited as the President stated to the interception of one-end foreign
16 communications reasonably believed to involve a member or agent of al Qaeda or an affiliated
17 terrorist organization and that the NSA does not otherwise conduct the content surveillance
18 dragnet that the Plaintiffs allege; (2) other classified facts about the operation of the TSP that
19 would be necessary to adjudicate the lawfulness of that program, to the extent it is at issue in this
20 case; and (3) to the extent applicable, facts that would confirm or deny whether the NSA collects
21 large quantities of communication records information. As set forth below, the disclosure of
22 such information would cause exceptionally grave harm to national security.
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26 16. As noted above, in December 2005, President Bush explained that, after the
27 September 11 attacks, he authorized the NSA to intercept the content of certain communications
28 for which there are reasonable grounds to believe that (1) such communication originated or

1 terminated outside the United States, and (2) a party to such communication is a member or
2 agent of al Qaeda or an affiliated terrorist organization. The President stated at the time that this
3 activity, now referred to as the Terrorist Surveillance Program, did not involve the collection of
4 purely domestic communications, or international communications with no al Qaeda connection,
5 and these facts were reiterated publicly by the Attorney General and then-Deputy Director of
6 National Intelligence. As the President made clear in describing the limited scope of the TSP,
7 Plaintiffs' allegations of a content surveillance dragnet are false. But if the NSA had to
8 demonstrate in this case that the TSP was limited as the President stated, and not a dragnet as the
9 Plaintiffs claim, and that the NSA does not otherwise engage in the dragnet that Plaintiffs allege,
10 sensitive and classified facts about the operation of the TSP and NSA intelligence activities
11 would have to be disclosed. The disclosure of whether and to what extent the NSA utilizes
12 certain intelligence sources and methods would reveal to foreign adversaries the NSA's
13 capabilities, or lack thereof, enabling them to either evade particular channels of communications
14 that are being monitored, or exploit channels of communications that are not subject to NSA
15 activities, in either case risking exceptionally grave harm to national security.

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19 17. Similarly, confirmation or denial of any information concerning whether the NSA
20 collects large quantities of communication records—to the extent such allegations are relevant to
21 this case—would also disclose information about whether or not the NSA utilizes particular
22 intelligence sources and methods and, thus, the NSA's capabilities or lack thereof.

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24 18. Finally, disclosure of any information tending to confirm or deny whether
25 Verizon or AT&T assists the NSA with alleged intelligence activities as Plaintiffs claim would
26 cause exceptionally grave harm to the national security. Again, such disclosures would help
27 foreign adversaries evade detection by revealing whether or not the NSA utilizes particular
28 intelligence sources and methods or monitors particular channels of communications.

