

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NASSER AL-AULAQI, on his own)
behalf and as next friend)
acting on behalf of)
ANWAR AL AULAQI)
)
Plaintiff,) No. 1:10cv01469 (JDB)
)
v.)
)
BARACK H. OBAMA, President of the)
United States,)
ROBERT M. GATES, Secretary of)
Defense,)
LEON E. PANETTA, Director, Central)
Intelligence Agency)
(in their official capacities))
)
Defendants.)

**DECLARATION AND FORMAL CLAIM OF
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES
BY LEON E. PANETTA, DIRECTOR, CENTRAL INTELLIGENCE AGENCY**

I, LEON E. PANETTA, hereby declare:

I. INTRODUCTION

1. I am the Director of the Central Intelligence Agency ("DCIA") and have served in this capacity since 13 February 2009.¹ As DCIA, I serve as the executive head of the CIA pursuant to the National Security Act of 1947.² In my capacity as DCIA, I lead the CIA and manage the Intelligence Community's

¹ Prior to serving as DCIA, I served as Chief of Staff to President William J. Clinton, from 1994 to 1997; Director of the Office of Management and Budget, from 1993 to 1994; Member of the U.S. House of Representatives from California's 17th District, from 1977 to 1993; and First Lieutenant in the U.S. Army from 1964 to 1966, for which I received the Army Commendation Medal.

² 50 U.S.C.A. § 403-4a (West Supp. 2010).

human intelligence and open source collection programs on behalf of the Director of National Intelligence ("DNI"), among other duties.³

2. Through the exercise of my official duties, I have been advised of this litigation and I have read the Complaint filed in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

3. The purpose of this declaration is to formally assert and claim the state secrets privilege, as well as relevant statutory privileges under section 102A(i)(1) of the National Security Act of 1947, as amended, and section 6 of the CIA Act of 1949, as amended, to protect intelligence sources, methods and activities that may be implicated by the allegations in the Complaint or otherwise at risk of disclosure in this case. Specifically, I am invoking the privilege over any information, if it exists, that would tend to confirm or deny any allegations in the Complaint pertaining to the CIA, as well as any other information implicated by Plaintiff's Complaint that would tend to expose any intelligence sources, methods or activities. Such information should be protected by the Court

³ Executive Order 12333, as amended, §§ 1.6-1.7, sets forth the duties of the DCIA. See 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25 (West Supp. 2010), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008).

and excluded from any use in this litigation. I make these claims of privilege in my capacity as the Director of the CIA and after deliberation and personal consideration of the matter. I do not make these claims lightly.

4. Furthermore, after deliberation and personal consideration, I have determined that the specific factual bases for my privilege assertions, detailed descriptions of the privileged information at issue, and other information relevant to my privilege assertion cannot be set forth on the public record without revealing the very information that I seek to protect and risking the very harm to U.S. national security that I seek to prevent. I have therefore separately submitted a classified, ex parte, in camera declaration for the Court's review.

5. It is my belief that my declarations adequately explain why this case cannot be litigated without risking or requiring the disclosure of classified and privileged intelligence information that must not be disclosed. Should the Court require additional information concerning my claims of privilege, I respectfully request an opportunity to provide such additional information prior to the entry of any ruling regarding my privilege claims.

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

Executed this 23rd day of September, 2010.

A handwritten signature in black ink, appearing to read 'Leon E. Panetta', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

Leon E. Panetta
Director, Central Intelligence Agency