

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS,
CAROLYN JEWEL, and ERIK KNUTZEN
On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

AT&T CORP., AT&T INC., and
DOES 1-20, inclusive,

Defendants.

Case No. C-06-0672-VRW

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

**SUBMITTED IN CAMERA,
EX PARTE**

Hon. Vaughn R. Walker

***IN CAMERA, EX PARTE DECLARATION OF JOHN D. NEGROPONTE,
DIRECTOR OF NATIONAL INTELLIGENCE***

I, John D. Negroponte, do hereby state and declare as follows:

(U) INTRODUCTION

1. (U) 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 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. (U) 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 Director of National Intelligence. In particular, as set forth below, I have read and personally considered the

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information contained in the *In Camera, Ex Parte* Declaration of Lt. Gen. Keith B. Alexander,
Director of the National Security Agency, filed in this case.

3. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ As Gen. Alexander states, *see In Camera*
Alexander Decl. ¶ 3, this lawsuit implicates several highly classified and critically important
intelligence activities of the National Security Agency and, in particular, [REDACTED]
[REDACTED] that cannot be disclosed without causing exceptionally grave harm to U.S.
national security. Such information includes [REDACTED]

including certain activities that have been specifically authorized by the Foreign Intelligence
Surveillance Court ("FISC"). Each of these activities is utilized to meet the extremely serious
threat of another terrorist attack on the U.S. Homeland [REDACTED]
a threat which I describe further below based on a recent assessment of the National Counter
Terrorism Center (NCTC) prepared in April 2006.

4. (U) The purpose of this declaration is to formally assert, in my capacity as the
Director of National Intelligence and head of the United States Intelligence Community, the
military and state secrets privilege (hereafter "state secrets privilege") and 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 at risk of disclosure in this case. Disclosure of the
information covered by this privilege assertion reasonably could be expected to cause

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1 exceptionally grave damage to the national security of the United States and, therefore, the
2 information should be excluded from any use in this case. In addition, I concur with Gen.
3 Alexander's conclusion that, because the very subject matter of this lawsuit concerns highly
4 classified and critically important foreign intelligence activities, the risk is great that further
5 litigation will lead to the disclosure of information harmful to U.S. national security and,
6 accordingly, that this case should be dismissed. *See In Camera* Alexander Decl. ¶ 76.

8 (U) CLASSIFICATION OF DECLARATION

9 5. ~~(S)~~ Pursuant to the standards in Executive Order No. 12958, as amended by
10 Executive Order No. 13292, this declaration is classified as: ~~TOP SECRET//COMINT [REDACTED]~~
11 ~~[REDACTED]//TSP//HCS//ORCON//NOFORN//MR~~. The details concerning these classification
12 markings are set forth in the Alexander Declaration at ¶¶ 5-8 and are briefly summarized here.
13 Under Executive Order No. 12958, information is classified "TOP SECRET" if unauthorized
14 disclosure of the information reasonably could be expected to cause exceptionally grave damage
15 to the national security of the United States; "SECRET" if unauthorized disclosure of the
16 information reasonably could be expected to cause serious damage to national security; and
17 "CONFIDENTIAL" if unauthorized disclosure of the information reasonably could be expected
18 to cause identifiable damage to national security. At the beginning of each paragraph of this
19 declaration, the letters "U," "C," "S," and "TS" indicate respectively that the information is
20 either UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP SECRET.

21 6. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented
22 Information (SCI), which is "subject to special access and handling requirements because it
23 involves or derives from particularly sensitive intelligence sources and methods." 28 C.F.R.
24 § 17.18(a). This declaration references communications intelligence (COMINT), also referred to
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1 as special intelligence (SI), which is a subcategory of SCI that identifies information that was
2 derived from exploiting cryptographic systems or other protected sources by applying methods
3 or techniques, or from intercepted foreign communications. This declaration also references
4 human intelligence (HCS), another subcategory of SCI that identifies information derived from
5 individuals who provide intelligence information.

6
7 7. ~~(TS//SI~~ [REDACTED] ~~/TSP//OC/NF)~~ This declaration also contains information
8 about the Terrorist Surveillance Program (TSP), a controlled access signals intelligence program
9 authorized by the President in response to the attacks of September 11, 2001. Information
10 pertaining to this program is denoted with the special marking "TSP." [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 8. ~~(S)~~ Finally, information labeled "NOFORN" may not be released to foreign
16 governments, foreign nationals, or non-U.S. citizens without permission of the originator and in
17 accordance with DNI policy. The "ORCON" designator means that the originator of the
18 information controls to whom it is released. Finally, this document is marked Manual Review
19 ("MR") indicating that it is not subject to automatic declassification at any specific date.
20

21 **(U) BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

22 9. (U) The position of Director of National Intelligence was created by Congress in
23 the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
24 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
25 the National Security Act of 1947). Subject to the authority, direction, and control of the
26 President, the Director of National Intelligence serves as the head of the U.S. Intelligence
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1 Community and as the principal adviser to the President, the National Security Council, and the
2 Homeland Security Council for intelligence matters related to the national security. *See* 50
3 U.S.C. § 403(b)(1), (2).

4 10. (U) The United States "Intelligence Community" includes the Office of the
5 Director of National Intelligence; the Central Intelligence Agency; the National Security
6 Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the
7 National Reconnaissance Office; other offices within the Department of Defense for the
8 collection of specialized national intelligence through reconnaissance programs; the intelligence
9 elements of the military services, the Federal Bureau of Investigation, the Department of the
10 Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast
11 Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the
12 Department of Homeland Security concerned with the analysis of intelligence information; and
13 such other elements of any other department or agency as may be designated by the President, or
14 jointly designated by the DNI and heads of the department or agency concerned, as an element of
15 the Intelligence Community. *See* 50 U.S.C. § 401a(4).
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19 11. (U) The responsibilities and authorities of the Director of National Intelligence
20 are set forth in the National Security Act. *See* 50 U.S.C. § 403-1. These responsibilities include
21 ensuring that national intelligence is provided to the President, the heads of the departments and
22 agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military
23 commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C.
24 § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the
25 requirements and priorities for, and managing and directing the tasking, collection, analysis,
26 production, and dissemination of national intelligence by elements of the Intelligence
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1 Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and
2 determining, based on proposals submitted by the heads of agencies and departments within the
3 Intelligence Community, an annual consolidated budget for the National Intelligence Program
4 for presentation to the President, and for ensuring the effective execution of the annual budget
5 for intelligence and intelligence-related activities, and for managing and allotting appropriations
6 for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).
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8 12. (U) In addition, the National Security Act of 1947, as amended, provides that
9 "[t]he Director of National Intelligence shall protect intelligence sources and methods from
10 unauthorized disclosure." 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
11 establishes and implements guidelines for the Intelligence Community for the classification of
12 information under applicable law, Executive orders, or other Presidential directives and access to
13 and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
14 for the establishment of uniform standards and procedures for the grant of access to Sensitive
15 Compartmented Information ("SCI") to any officer or employee of any agency or department of
16 the United States, and for ensuring the consistent implementation of those standards throughout
17 such departments and agencies. *Id.* § 403-1(j)(1), (2).
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20 13. (U) By virtue of my position as the Director of National Intelligence, and unless
21 otherwise directed by the President, I have access to all intelligence related to the national
22 security that is collected by any department, agency, or other entity of the United States.
23 Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order
24 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the
25 President has authorized me to exercise original TOP SECRET classification authority.
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(U) ASSERTION OF STATE SECRETS PRIVILEGE

14. ~~(TS//SI [REDACTED] NF)~~ As set forth herein, and as described in the Declaration of Gen. Alexander, *see* Alexander Decl. ¶ 3, various classified facts and categories of classified information related to national intelligence activities are implicated by the Plaintiffs' claims in this case. After careful and actual personal consideration of the matter, based upon my own knowledge and information obtained in the course of my official duties, including the Declaration of Gen. Alexander, I have determined that the disclosure of the information described herein concerning intelligence information, sources, and methods reasonably could be expected to cause exceptionally grave damage to the national security of the United States and must be excluded from disclosure and use in this case. In addition, it is my judgment that sensitive state secrets are so central to the subject matter of the litigation that any attempt to proceed in the case will substantially risk the disclosure of the secrets described herein and will cause exceptionally grave damage to the national security of the United States.

(U) ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT

15. ~~(TS//SI [REDACTED] NF)~~ Through this declaration, I also hereby invoke and assert a statutory privilege held by the Director of National Intelligence under the National Security Act to protect intelligence sources and methods at issue in this case, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory privilege for intelligence sources and methods is coextensive with my state secrets privilege assertion as to intelligence sources and methods.

(U) INFORMATION SUBJECT TO CLAIM OF PRIVILEGE

16. ~~(TS//SI [REDACTED] TSP//OC/NF)~~ The information related to the Plaintiffs' claims that is subject to the state secrets and statutory privileges I am asserting includes the following:

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~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON//NOFORN//MR~~

1 A. Information Concerning the Continuing al Qaeda Terrorist Threat

2 B. Intelligence Sources and Methods

3 (1) [REDACTED]

4 (2) [REDACTED]

5 (3) Meta Data Collection and Analysis

6 (4) The Terrorist Surveillance Program

7 (a) Focus of the TSP on al Qaeda Terrorist Targets

8 (b) Importance of the TSP

9 C. Information that Would Confirm or Deny Intelligence Targets

10 I first describe the al Qaeda terrorist threat, which forms the foundation of my assertion of
11 privilege, because it is the threat at which the challenged intelligence activities are directed. I
12 then summarize the intelligence sources and methods at issue in this case described by Gen.
13 Alexander. I also discuss the harm that would result to U.S. national security if the privileged
14 information at issue were disclosed.

15 (U) DESCRIPTION OF INFORMATION AND HARM OF DISCLOSURE

16 A. (U) Information Concerning the Continuing al Qaeda Terrorist Threat

17 17. ~~(S//OC/NF)~~ Based on all of the intelligence information presently available to us,
18 it is the judgment of the U.S. Intelligence Community that the al Qaeda terrorist network has the
19 intention and the potential capability to carry out catastrophic terrorist acts on the U.S.
20 Homeland. Indeed, intelligence indicates that al Qaeda's central leadership is pursuing multiple,
21 possibly related, paths to an attack against the Homeland. This is so notwithstanding a series of
22 setbacks to the al Qaeda terrorist network. Preventing such attacks is the U.S. Intelligence
23 Community's highest priority. The intelligence activities that are implicated by and put at risk of

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—TOP SECRET//COMINT [REDACTED] FSP//HCS//ORCON//NOFORN//MR—
disclosure in this lawsuit must be understood in the context of the extremely serious threat faced
by the United States.

18. (U) With the attacks of September 11, al Qaeda demonstrated its ability to introduce agents into the United States undetected and to perpetrate devastating attacks. As the President has recently made clear, “[t]he terrorists want to strike America again, and they hope to inflict even more damage than they did on September the 11th.” Press Conference of President Bush (Dec. 19, 2005).¹ For this reason, as the President explained, finding al Qaeda sleeper agents in the United States remains one of the paramount concerns in the War on Terror to this day. *Id.*

19. (U) Since September 11, al Qaeda leaders have repeatedly promised to deliver another, even more devastating attack on America. For example, in October 2002, al Qaeda leader Ayman al-Zawahiri stated in a video addressing the “citizens of the United States”: “I promise you that the Islamic youth are preparing for you what will fill your hearts with horror.” In October 2003, Osama bin Laden stated in a released videotape that “We, God willing, will continue to fight you and will continue martyrdom operations inside and outside the United States” And again in a videotape released on October 24, 2004, bin Laden warned United States citizens of further attacks and asserted that “your security is in your own hands.”

20. (U) In recent months, al Qaeda has reiterated its intent to inflict a catastrophic terrorist attack on the United States. On December 7, 2005, al-Zawahiri professed that al Qaeda “is spreading, growing, and becoming stronger,” and that al Qaeda is “waging a great historic battle in Iraq, Afghanistan, Palestine, and even in the Crusaders’ own homes.”

¹ Available at <http://www.whitehouse.gov/news/releases/2005/12/20051219-2.html>.
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1 21. (U) Since the September 11 attacks, al Qaeda has staged several large-scale
2 attacks around the world, including in Indonesia, Madrid, and London, killing hundreds of
3 innocent people.

4 ~~(S//OC/NF)~~ Al Qaeda's Likely Presence in the United States

5 22. ~~(S//HCS//OC/NF)~~ Classified intelligence information provides a more specific
6 and alarming picture of the continuing terrorist threat to the Homeland posed by al Qaeda. In
7 sum, the U.S. Intelligence Community believes that the al Qaeda terrorist network intends to
8 execute a catastrophic terrorist attack on the U.S. Homeland. That threat is the reason that the
9 President authorized the Terrorist Surveillance Program and related activities described herein.
10 The intelligence activities at issue in this case are thus being utilized to meet a known, real, and
11 perhaps imminent threat to the lives of thousands of Americans and, indeed, to the continuity of
12 the United States Government. The threat that we face cannot be understated and may be of the
13 most extreme nature.

16 23. ~~(S//HCS//OC/NF)~~ In particular, based on the most recent assessment issued
17 on April 20, 2006, by the National Counterterrorism Center (NCTC), an entity that I oversee as
18 DNI, the U.S. Intelligence Community continues to receive reliable intelligence [REDACTED]
19 [REDACTED] intelligence sources that al Qaeda remains intent on conducting a grand-scale
20 attack on the Homeland with a likely focus on U.S. symbols of power or economic might. Al
21 Qaeda continues to have these intentions despite the degradation of its leadership, resources, and
22 operational capability in the wake of a steady stream of deaths, captures, and disruptions.
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24 [REDACTED]
25 [REDACTED]
26 [REDACTED] As a result of our
27 disruptions of the group's planning and increased security measures, however, "softer" targets
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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~
1 have become increasingly attractive. Specific softer targets include tourist sites, shopping
2 centers, and passenger trains. [REDACTED]
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9 24. ~~(S//HCS//NF)~~ We have numerous reasons to believe al Qaeda is still plotting
10 another attack on U.S. soil. The Al-Jazirah television network aired an audiotape in January
11 2006 in which Osama bin Laden said that preparations were under way for attacks inside the
12 United States and that al Qaeda's failure to strike the United States since September 11, 2001
13 was not due to improved U.S. security measures. Bin Laden's deputy, Ayman al-Zawahiri, also
14 issued threats against the United States in statements in January and March of this year. In
15 addition, an al Qaeda media facilitator released a statement on September 11, 2005, threatening
16 new attacks on the United States, specifically naming Los Angeles as a target.
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19 25. ~~(S//HCS//OC/NF)~~ [REDACTED]
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1 [REDACTED]
2 [REDACTED]
3 26. ~~(S//HCS//OC/NF)~~ Our intelligence also indicates that al Qaeda is interested in
4 using Mexico as a point of entry into the United States. [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 Our intelligence also indicates that al Qaeda is continually looking for operatives
8 capable of entering the United States without undue scrutiny, [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 Possible al Qaeda Targets and Attacks

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13 27. ~~(TS//HCS//OC/NF)~~ While any attack on the Homeland would be viewed by al
14 Qaeda as a success. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 28. ~~(S//HCS//OC/NF)~~ Al Qaeda's signature attack is one that would be impressive in
22 its scope or audacity and that hits either multiple targets simultaneously or a single high-profile
23 place or person. According to the April 2006 NCTC assessment, reporting [REDACTED]
24 [REDACTED] has identified a variety of potential targets that would be attractive to group
25 operatives:
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 29. ~~(TS// [REDACTED]//HCS//OC/NF)~~ Although intelligence regarding specific targets or
6 locations is often incomplete, known target locations include large cities [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 30. ~~(S//HCS//OC/NF)~~ In addition, constraints on al Qaeda's capabilities and
18 increased security measures at airports, government buildings, and other high-profile targets in
19 the United States could be making lower profile, less-protected targets increasingly attractive.
20 An attack in the United States, like those against the Madrid commuter train and London
21 transport system, would probably meet al Qaeda's objectives without requiring the planning,
22 resources, and expertise that would be necessary for a complex September 11-style attack.
23 According to our present intelligence, this shift in al Qaeda's planning has become apparent in
24 recent months [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 33. ~~(S//HCS//OC/NF)~~ The U.S. Intelligence Community remains concerned that the
2 multiple terrorist attacks carried out in London in July 2005 and Madrid in March 2004 may be a
3 harbinger of similar attacks to come in the United States in which Islamic extremists in Western
4 countries—whether homegrown or sent from abroad—will mimic and refine the small bomb
5 tactics used in these attacks.² Of specific concern to the Intelligence Community in the wake of
6 the London bombings is the continuing interest that al Qaeda and its affiliates have expressed in
7 attacking [REDACTED]. Our intelligence suggests that any attack against [REDACTED]
8 [REDACTED] most likely would occur in major cities or against [REDACTED] serving major
9 cities, which would be consistent with al Qaeda's expressed intent to inflict a high number of
10 casualties in key centers of the economy. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 34. ~~(S//HCS//OC/NF)~~ [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 ² ~~(S//HCS//OC/NF)~~ With respect to al Qaeda-inspired groups, the U.S. Intelligence
23 Community remains concerned about a far-reaching, Internet-connected, network of
24 extremists [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 While U.S. authorities have identified instances of possible surveillance and pre-operational
9 activities aimed at gathering intelligence on rail transit systems, as yet there is no corroborating
10 intelligence to link them to operational planning against U.S. mass transit systems.

11 35. ~~(S//HCS//OC/NF)~~ The Intelligence Community also believes that al Qaeda and
12 its affiliates continue to target the civil aviation sector, including U.S. passengers and Western
13 aircraft overseas. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 36. ~~(TS//HCS//OC/NF)~~ Despite our intelligence successes, however, there are
26 significant swaths of al Qaeda activity that almost certainly remain undetected. We believe it
27 likely that, at any given point in time, the group has multiple plots in play against the U.S.
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Homeland, some of which could be in the advanced stages of preparation. [REDACTED]

[REDACTED]

Unconventional Weapons

37. ~~(S//HCS//OC/NF)~~ The threat posed by al Qaeda extends beyond the realm of
conventional weapons. [REDACTED]

[REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED]

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[REDACTED]

40. ~~(TS//SI//OC/NF)~~ These various examples of some of our intelligence information demonstrate that the al Qaeda network continues to plan ways to inflict a catastrophic attack. In sum, based on all of the intelligence presently available to us, it is the U.S. Intelligence Community's judgment that al Qaeda poses a grave danger to the U.S. Homeland. The severity of that threat, and the difficulty of tracking al Qaeda members, is precisely the reason the government is utilizing all lawful intelligence-gathering capabilities. I set forth this threat information not only to provide the court with crucial background as to why the intelligence activities at issue in this case are being undertaken, but also to assert a claim of privilege over this threat information. Although the foregoing threat assessment demonstrates precisely why we undertake these activities, the government cannot disclose this information in defending the

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~~TOP SECRET//COMINT~~ [REDACTED]

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~~TOP SECRET//COMINT [REDACTED] FSP//HCS//ORCON/NOFORN//MR~~
1 legality of the intelligence activities being challenged, since to do so obviously would disclose to
2 our adversaries what we know of their plans and how we may be obtaining information about
3 them. Such disclosure would lead our adversaries to not only alter their plans, but to implement
4 greater security for their communications, thereby increasing the risk of non-detection. In
5 addition, disclosure of threat information might reveal human sources for the United States and,
6 thus, compromise those sources and put lives at danger. Accordingly, while I believe that such
7 threat information is crucial to understanding the context in which NSA conducts the intelligence
8 activities put at issue by Plaintiffs' lawsuit, I must assert the state secrets privilege and DNI
9 statutory privilege over the information because of the grave damage to national security that
10 could reasonably be expected to result from its disclosure.
11

12
13 **B. Intelligence Sources and Methods**

14 41. ~~(TS//SI [REDACTED] FSP//OC/NF)~~ As set forth in Gen. Alexander's Declaration,
15 the United States faced urgent and immediate intelligence challenges after the September 11
16 attacks, and the President authorized signals intelligence activities designed to meet those
17 challenges and to detect and prevent future terrorist attacks by al Qaeda and its affiliates. *See In*
18 *Camera* Alexander Decl. ¶¶ 17-20; 21-24. In carrying out these intelligence activities and
19 others, the NSA utilizes various sources and methods, including [REDACTED]
20

21 [REDACTED] *Id.* ¶ 21. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 *Id.* In addition, pursuant to
25 authorizations of the President and Foreign Intelligence Surveillance Court ("FISC"), NSA is
26 collecting non-content "meta data" related to Internet communications for the purpose of
27 conducting targeted analysis to uncover the contacts [REDACTED]
28

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~

1 [REDACTED] *Id.* ¶ 23. For the same purpose, NSA similarly collects in bulk non-
2 content meta data for telephone calls. *Id.* ¶ 24. NSA is also collecting the content of certain
3 telephone and Internet communications involving al Qaeda members or affiliates, as authorized
4 by the President under the TSP. *Id.* ¶ 22.

5 42. ~~(TS//SI)~~ [REDACTED] ~~(TSP//OC/NF)~~ I concur with Gen. Alexander's assessment
6 that [REDACTED]
7 [REDACTED] are directly
8 [REDACTED] at issue in this case and that further litigation thus poses a grave risk to national security. For this
9 reason, along with the al Qaeda threat information as to which I have asserted privilege above, I
10 am also formally asserting the state secrets privilege and the DNI's statutory privilege to protect
11 the intelligence information, sources and methods further described in Gen. Alexander's
12 declaration. I have personally considered this information, assert a claim of privilege as to each
13 category, and explain the harm to national security that would result from its disclosure.

14 43. ~~(TS//SI)~~ [REDACTED] ~~(TSP//OC/NF)~~ In sum, upon personal consideration of the
15 matter, it is my judgment that disclosure of the information described below, and as further
16 detailed in the Declaration of Gen. Alexander, would cause exceptionally grave damage to the
17 national security of the United States by:

- 18 (1) Revealing the sources and methods concerning NSA intelligence-gathering
19 activities, including by:

- 20 • [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 • Revealing the sources and methods concerning NSA's activities, including [REDACTED]
28 [REDACTED] as well as activities designed for the purpose of detecting and

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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~

1 preventing [REDACTED] attacks, such as the TSP and meta data collection and
2 analysis, thereby enabling any foreign adversary [REDACTED]
[REDACTED] to compromise, detect, and evade NSA surveillance.

- 3 • Revealing information regarding the success of NSA activities implicated by this
4 case, which would disclose the substantive knowledge of the United States
5 Government as to terrorist plans and activities, and also could tend to reveal the
6 sources and methods by which the United States obtained such information.
- 7 (2) Revealing information regarding who is or is not targeted for surveillance by the
8 NSA, or the basis on which individuals are targeted, thereby allowing any foreign
adversary [REDACTED] to compromise, detect, or evade
U.S. surveillance operations.

9 *In Camera* Alexander Decl. ¶ 62. I describe the harm that would be caused by the disclosure of
10 the information in each category at issue further below. In addition, I concur with Gen.

11 Alexander's assessment that even bits of information or seemingly innocuous facts can, in the
12 context of this case or in conjunction with unclassified information, reveal a fuller picture of
13 highly classified government activities and cause severe harm to national security interests. *Id.*

14 (1) ~~(TS//SI [REDACTED] OC/NF) [REDACTED]~~

15 44. ~~(TS//SI [REDACTED] TSP//OC/NF) [REDACTED]~~

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~
45. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ [REDACTED]

46. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ [REDACTED]

47. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ [REDACTED]

(2) ~~(TS//SI/NF)~~ [REDACTED]

48. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT~~

~~TSP//HCS//ORCON/NOFORN//MR~~

(3) ~~(TS//SI//NF)~~ Meta Data Collection and Analysis

49. ~~(TS//SI//NF)~~ I further assert the state secrets privilege and the DNI statutory privilege to protect from disclosure in this case information that would reveal or tend to reveal NSA actions to collect and conduct targeted analysis of non-content information known as "meta data" related to Internet and telephone communications. *See In Camera Alexander Decl.* ¶ 37-

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~

44.

50. ~~(TS//SI//NF)~~ As Gen. Alexander explains, meta data is non-content header/router/addressing information, such as the "to," "from," "cc," and "bcc" lines (as opposed to the body or "re" lines) of a standard email, for certain communications. *See In Camera* Alexander Decl. ¶ 39. The NSA collects, in bulk, meta data associated with electronic communications [REDACTED]

[REDACTED] *Id.* The NSA also collects, in bulk, telephony meta data [REDACTED]
[REDACTED] *Id.* ¶¶ 24, 44. The collection of Internet and telephony meta data was authorized by the President after the September 11 attacks. *Id.* ¶ 23 n.7. In July 2004, the Foreign Intelligence Surveillance Court also authorized the bulk collection of Internet meta data and has reauthorized that collection approximately every 90 days since. *Id.*

51. ~~(TS//SI//NF)~~ The bulk collection of meta data allows NSA to use critical and unique analytical capabilities to track, historically, the contacts [REDACTED] of known terrorists, a tool that has been highly useful in detecting previously unknown terrorists and unknown terrorist accounts. *In Camera* Alexander Decl. ¶¶ 40-42; 44. Although the NSA is collecting meta data in bulk, it is only authorized to query the archived meta data using email addresses or telephone numbers for which there are facts giving rise to a reasonable, articulable suspicion that the email address is associated with [REDACTED]

Id. ¶¶ 23, 24, 39. [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON//NOFORN//MR~~
plans as possible. *Id.* ¶ 43.

52. ~~(TS//SI//NF)~~ As Gen. Alexander explains, with meta data analysis, NSA can analyze critical [REDACTED] communications that identify those communicating and collaborating with [REDACTED] operatives. *See In Camera* Alexander Decl. ¶ 43. Without this method of analysis, NSA would be left with individual communications conducted, for example, with email addresses that may quickly vanish. *Id.* In order to ascertain as rapidly as possible the potential [REDACTED] terrorist threats facing the United States, NSA must know not only what a foreign terrorist target says in a particular telephone or Internet intercept, but with whom that person has been communicating. *Id.*

53. ~~(TS//SI//TSP//OC/NF)~~ Disclosure of NSA activities to collect and analyze meta data, including the Foreign Intelligence Surveillance Court's authorization of bulk Internet meta data collection, would cause exceptionally grave harm to the national security of the United States. As Gen. Alexander explains, NSA's collection and analysis of meta data is a unique and highly valuable tool for quickly assessing the identities, whereabouts, and relationships of individuals involved in terrorist activities. *See In Camera* Alexander Decl. ¶ 70. The loss of this technique would cause exceptionally grave harm, and indeed, grave danger, because [REDACTED] seek already to utilize significant measures to hide their communications. The loss of any tool to help track this severe terrorist threat to the U.S. Homeland, but particularly one so sophisticated, could have devastating results—in loss of life, or the economic, social, and governmental stability of the United States.

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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~(4) (U) The Terrorist Surveillance Program

54. ~~(TS//SI//TSP//OC/NF)~~ I hereby also assert the state secrets privilege and the DNI statutory privilege to protect from disclosure in this case information that would reveal or tend to reveal classified information concerning the operation of the Terrorist Surveillance Program acknowledged by the President in December 2005. *See In Camera* Alexander Decl. ¶¶ 45-58. While public speculation about the TSP tends to assume that the program collects a wide range of domestic communications, that is not the case. The program is narrowly focused on collecting the communications of an agent, member, of associate of al Qaeda. Under the TSP, communications are intercepted only if they either originated or terminated outside the United States *and* only if a party to the communication is a member or affiliate of al Qaeda. As Gen. Alexander explains, NSA's decision to collect the content of phone calls or emails turns on factors that are all linked to whether an al Qaeda connection is at issue. *See In Camera* Alexander Decl ¶ 46-60. [REDACTED] NSA [REDACTED] specifically intercepts telephone and email address that, through analysis, are reasonably believed to be that of an agent, member, of associate of al Qaeda. *Id.* ¶¶ 49, 52. Among the highly classified aspects of the TSP is its relationship to meta data collection and analysis. NSA SIGINT activities typically interrelate, and in this instance the importance and effectiveness of the TSP is that, in conjunction with meta data analysis, it provides an unmatched operational swiftness for targeting not just one suspected terrorist, but for ascertaining those who are collaborating with that terrorist. *Id.* ¶¶ 56-57.

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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~
55. ~~(TS//SI//TSP//OC/NF)~~ Information about how the TSP is operated could not be

revealed without causing exceptionally grave damage to the national security. The factors on which NSA relies to target someone under the TSP but would tip-off adversaries as to how they might get caught in this surveillance. The interaction between the TSP and meta data analysis, while important to understanding the speed and flexibility of the program, would also reveal to adversaries that [REDACTED]

[REDACTED] As Gen. Alexander explains, armed with this knowledge, an adversary could take steps to avoid detection, [REDACTED]

[REDACTED] See *In Camera* Alexander Decl. ¶¶ 70. In short, anything that compromises how NSA collects vital intelligence on the terrorist threat within the United States will make it harder to detect that threat, and more likely that a terrorist attack will be successful.

56. ~~(TS//SI//TSP//OC/NF)~~ Finally, disclosure of information that would reveal or tend to reveal the success of the NSA activities at issue would cause exceptionally grave harm to the national security. As Gen. Alexander explains, these activities constitute highly important intelligence tools available to the United States for protecting the Homeland from another terrorist attack. See *In Camera* Alexander Decl. ¶¶ 58(a)-(e). The interception of communications under the TSP, in conjunction with meta data analysis, has been successful in helping to find terrorists in our midst. *Id.* But, as again should be clear, the government cannot disclose how the challenged activities have worked to protect the national security of the United States without compromising those very activities and revealing the substantive knowledge of the United States Government as to terrorist plans and activities. Nor can the government use the examples of successes to demonstrate that the central focus of the program is on al Qaeda terrorist threats, nor the significant benefits already served by the activities at issue.

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Accordingly, while this information would help demonstrate the importance of the activities and compelling interests at stake would itself harm national security, I must assert the state secrets privilege and DNI statutory privilege over the successful application of the NSA TSP and meta data activities.

C. (U) Information That Would Confirm or Deny Intelligence Targets

57. ~~(TS//SI//NF)~~ I further assert the state secrets privilege and the DNI statutory privilege to protect from disclosure in this case information that would reveal or tend to reveal whether or not the four Plaintiffs in this case have had the contents of their telephone and Internet communications and information related to those communications intercepted, disclosed, divulged, and/or used without judicial or other lawful authorization. *See In Camera Alexander Decl.* ¶ 61.

58. ~~(TS//SI//NF)~~ [REDACTED]

[REDACTED] *See In Camera Alexander Decl.* ¶¶ 74-75. As should be obvious, to confirm or deny whether someone is a target of surveillance would disclose either who is being targeted—thus compromising that collection—or who is not being targeted, thus revealing to adversaries that an individual is a secure source for communicating or, more broadly, the methods being used to conduct surveillance. *See id.* ¶ 75. While it may seem innocuous to disclose that law-abiding citizens are not being targeted, this may provide insight to a trained eye as to the scope of NSA's activities. Moreover, providing assurances that someone is not being targeted becomes unworkable, and itself revealing, in cases where an individual may be targeted. A refusal to confirm or deny only in cases where surveillance is occurring would effectively disclose and compromise that surveillance. [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED] The only recourse for NSA is to
4 neither confirm nor deny whether someone has been targeted or subject to NSA collection,
5 regardless of whether the individual has been targeted or not. To say otherwise when challenged
6 in litigation would result in the frequent, routine exposure of NSA information, sources, and
7 methods and would severely undermine surveillance activities in general.
8

9 (U) RISK OF LITIGATION

10 59. ~~(TS//SI [REDACTED] OC/NF)~~ Finally, I concur with Gen. Alexander's conclusion
11 that further litigation of this case will inherently risk the disclosure of highly classified activities.
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 60. ~~(TS//SI [REDACTED] OC/NF)~~ In addition, as Gen. Alexander explains, Plaintiffs'
26 central claims are simply inaccurate: NSA is not sweeping up the content of millions of
27 domestic Internet communications. The content of email and telephone communications are
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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON//NOFORN//MR~~
collected by NSA pursuant to the TSP only if at least one party to the communication is a
member or affiliate of al Qaeda and such communication originated or terminated outside the
United States; meta data, which is non-content information, is collected in bulk but only queried
and viewed in limited circumstances in order to track [REDACTED] terrorist groups.
See In Camera Alexander Decl. ¶ 45. Moreover, since July 2004, Internet meta data is being
collected pursuant to FISC authorization—not, as Plaintiffs allege, without a warrant. *Id.*
Nonetheless, any attempt to adjudicate the lawfulness of classified intelligence programs at issue,
including to demonstrate why Plaintiffs' allegations are inaccurate, would not only require a
exposition of the facts to demonstrate their lawfulness, but would risk disclosure of those facts in
the process.

61. ~~(TS//SI//OC/NF)~~ The stakes we face in the U.S. Intelligence Community are of
the highest magnitude. We know al Qaeda is planning to attack inside the United States again,
whether it be a "small" scale attack on shopping malls or "fun" places that kills dozens, a
devastating attack on aviation or rail systems that kills hundreds, a catastrophic, mass-casualty
attack that kills thousands, an attack on government or economic sector infrastructure that would
cause severe economic harm or threaten the continuity of government, or perhaps in the future,
the unthinkable prospect of a nuclear or radiological attack of some kind. NSA's activities, [REDACTED]
[REDACTED] authorized by the President after 9/11, and one crucial tool
authorized by the Foreign Intelligence Surveillance Court, are all directed at this terrible threat.
NSA's activities at risk of disclosure in this case an essential tools in detecting and preventing
the threat of a future terrorist attack on the United States and great care must be taken to protect
them from disclosure.

62. ~~(TS//NF)~~ For these reasons, in addition to invoking the state secrets and DNI

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Approved for public release May 5, 2014

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON//NOFORN//MR~~
1 statutory privilege to protect the intelligence information, sources, and methods at issue, I join
2 with Gen. Alexander in respectfully urging the Court to dismiss this case.

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

4 DATE: 5/12/2006

John D. Negroponte
5 JOHN D. NEGROPONTE
6 Director of National Intelligence
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