

~~TOP SECRET//SI//NOFORN~~

1 JOYCE R. BRANDA
 2 Acting Assistant Attorney General
 3 JOSEPH H. HUNT
 4 Director, Federal Programs Branch
 5 ANTHONY J. COPPOLINO
 6 Deputy Branch Director
 7 JAMES J. GILLIGAN
 8 Special Litigation Counsel
 9 MARCIA BERMAN
 10 Senior Trial Counsel
 11 RODNEY PATTON
 12 JULIA BERMAN
 13 Trial Attorneys
 14 U.S. Department of Justice
 15 Civil Division, Federal Programs Branch
 16 20 Massachusetts Avenue, NW
 17 Washington, D.C. 20001
 18 Phone: (202) 514-3358
 19 Fax: (202) 616-8470
 20 *Attorneys for the United States and Government*
 21 *Defendants Sued in their Official Capacities*
 22

23 **UNITED STATES DISTRICT COURT**
 24 **NORTHERN DISTRICT OF CALIFORNIA**
 25 **OAKLAND DIVISION**
 26

27 CAROLYN JEWEL, <i>et al.</i> ,	)	Case No. 4:08-cv-4373-JSW
28	)	
29 Plaintiffs,	)	CLASSIFIED DECLARATION
30	)	OF MIRIAM P.,
31 v.	)	NATIONAL SECURITY AGENCY
32	)	EX PARTE, IN CAMERA SUBMISSION
33 NATIONAL SECURITY AGENCY, <i>et al.</i> ,	)	
34	)	Date: December 19, 2014
35 Defendants.	)	Time: 9:00 a.m.
36	)	Courtroom 5, 2nd Floor
37	)	The Honorable Jeffrey S. White
38		
39		
40		
41		

Classified *In Camera*, *Ex Parte* Declaration of Miriam P., National Security Agency
 Jewel. v. NSA (No. 4:08-cv-4873-JSW)

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1 1. (U) I, Miriam P., do hereby state and declare as follows:

2 2. (U) I am the Deputy Chief of Staff for Signals Intelligence (SIGINT) Policy and
3 Corporate Issues for the Signals Intelligence Directorate (SID) of the National Security Agency
4 (NSA), an intelligence agency within the Department of Defense.

5 3. (U) I am responsible for, among other things, protecting NSA SIGINT activities,
6 sources, and methods against unauthorized disclosures. Under Executive Order No. 12333, the
7 NSA SIGINT Directorate is responsible for the collection, processing, and dissemination of
8 SIGINT information for the foreign intelligence purposes of the United States. 46 Fed. Reg.
9 59941 (Dec. 4, 1981) as amended by Executive Order 13284 (2003), Executive Order 13355
10 (2004), 69 Fed. Reg. 53,593 (Aug. 27, 2004); Executive Order 13470 (2008), 73 Fed. Reg.
11 45325. I have been designated an original TOP SECRET classification authority under
12 Executive Order (E.O.) 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense
13 Manual No. 5200.1, Vol. 1, Information and Security Program (Feb, 24, 2012).

14 4. (U) My statements herein are based upon my personal knowledge of SIGINT
15 collection and NSA operations, the information available to me in my capacity as the Deputy
16 Chief of Staff for SIGINT Policy and Corporate Issues for SID, and the advice of counsel.

17 5. (U) I submit this declaration for three purposes. First, this declaration describes on
18 the public record, to the extent practicable, the effectiveness of the NSA's "Upstream" collection
19 of communications under Section 702 of the Foreign Intelligence Surveillance Act ("FISA") as a
20 method of gathering foreign intelligence information. Second, this declaration provides some
21 details on the effectiveness of the program that cannot be disclosed on the public record.
22 Although the Government has released to the public some information about NSA's Upstream
23 collection, the operational details and much of the information about its effectiveness, set forth
24 below in classified paragraphs, has not been officially disclosed and remains classified. Because
25 the disclosure of this information could reasonably be expected to cause exceptionally grave
26 damage to national security, it falls within the NSA's claim of statutory privilege under Section 6

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1 of the National Security Agency Act of 1959, Public Law No. 86-36 (codified at 50 U.S.C. §
2 3601 *et seq.*), see Classified, *Ex Parte* Declaration of Frances J. Fleisch, NSA ¶¶ 8, 44(B)(1)(b)
3 (Dec. 20, 2013), which, in turn, formed the basis of the assertion of the state secrets privilege by
4 the Director of National Intelligence (“DNI”). See Public Declaration of James R. Clapper, DNI
5 (Sept. 11, 2012) (ECF No. 104) ¶¶ 3, 9, 11; Public Declaration of James R. Clapper, DNI (Dec.
6 20, 2013) (ECF No. 168) ¶¶ 4, 9, 11, 19.C.1.b. And finally, I describe the impracticability of
7 obtaining a warrant each time the NSA needs to target a selector for Upstream collection of
8 communications.

9 6. (U) Under the authority of Section 702 of the FISA Amendments Act (“FAA”) the NSA acquires information through two different methods. Under the PRISM collection, the
10 government sends selectors, such as an e-mail address, to a United States-based electronic
11 communication service provider that has been served with a directive issued in accordance with
12 the criteria of Section 702. The provider, such as an Internet Service Provider (“ISP”), then
13 furnishes to the government the communications from specific accounts that have been targeted
14 for collection. The content of telephone calls is not acquired through the PRISM collection. I
15 understand that PRISM collection is not at issue in the current motions practice before the Court.

16 7. (U) Upstream collection, in contrast, involves the compelled assistance (through
17 a Section 702 directive) of certain providers that control the telecommunications backbone over
18 which telephone and Internet-based communications transit. Unlike PRISM, Upstream
19 collection generally involves the acquisition of certain communications as they traverse the
20 telecommunications backbone.
21

22 **(U) Impracticability of Acquiring the Same Information through Other Methods**

23 8. (U) The NSA’s Upstream collection is capable of acquiring certain types of
24 targeted communications containing valuable foreign intelligence information that cannot be
25 collected under PRISM or other SIGINT methods authorized by FISA.

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1 9. (TS//SI//NF) [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 10. (TS//SI//NF) [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 11. (TS//SI//NF) [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 12. (U) In addition, unlike 702 PRISM collection, 702 Upstream is a valuable source
26 of "abouts" collection in which the targeted identifier (e.g., an e-mail address) is contained in the

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1 content of the communication. For example, a communication would be acquired via Upstream
2 collection if the targeted selector was found only in the body of an e-mail message and not in the
3 "to/from" line.

4 13. (U) "Abouts" communications are a valuable source of foreign intelligence
5 information that cannot be obtained through other FISA collection techniques currently used,
6 including PRISM collection.

7 14. ~~(S//SI//NF)~~ [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 15. ~~(TS//SI//NF)~~ [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 16. (U) Acquiring the content of certain telephone calls through Upstream collection
22 allows NSA to acquire significant foreign intelligence information that it may not otherwise
23 obtain through other methods of signals intelligence.
24

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

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~**(U) Contribution of Upstream Collection to NSA's Mission**

17. (U) Upstream collection fills a critical gap in U.S. intelligence gathering. Upstream collection has enabled the NSA to acquire—quickly and effectively—a greater range of foreign intelligence information that it otherwise would not be able to obtain. Upstream collection is a proven critical tool in the collection of significant and sometimes uniquely valuable foreign intelligence information necessary to protect the Nation's security. It allows the NSA to direct collection against targets quickly so that the NSA can nimbly turn collection into actionable intelligence leads for the Intelligence Community. Below is an outline of some of the ways Upstream collection has contributed significantly to the NSA's mission to defend the United States and its interests at home and abroad.

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

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

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

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

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1

2

3

21. ~~(TS//SI//NF)~~

4

5

6

7

8

9

22. ~~(TS//SI//NF)~~

10

11

12

13

14

23. ~~(TS//SI//NF)~~

15

16

~~(TS//SI//NF)~~

17

24. ~~(TS//SI//NF)~~

18

19

20

21

22

² ~~(TS//SI//NF)~~

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

1 25. ~~(TS//SI//NF)~~ [REDACTED]

2 [REDACTED]

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

4 26. ~~(TS//SI//NF)~~ [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 27. ~~(TS//SI//NF)~~ [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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

14 28. ~~(TS//SI//NF)~~ [REDACTED]

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~~~(TS//SI//NF)~~ [REDACTED]29. ~~(TS//SI//NF)~~ [REDACTED]30. ~~(TS//SI//NF)~~ [REDACTED]31. ~~(TS//SI//NF)~~ [REDACTED]**(U) Impracticality of Obtaining a Warrant**

32. (U) The reasons for which the Government sought the authority and renewal of the authority provided in Section 702 to collect intelligence targeted at non-U.S. persons located outside the United States without individualized warrants apply to both of NSA's methods of collection under Section 702—Upstream and PRISM.

33. (U) Requiring the NSA to obtain a FISA (or other type of) warrant each time the NSA needs to target a selector tasked for Upstream collection would be impractical and could result in the loss of critical foreign intelligence information such as that described above. Requiring the Government to obtain a warrant each time the NSA needed to task a selector also would be impractical given the significant number of selectors that need to be tasked for Upstream collection. Additionally, given that the collection of signals intelligence to obtain foreign intelligence information requires speed and flexibility so that NSA can respond to new and quickly evolving threats facing our nation, imposing a warrant requirement would reduce the

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

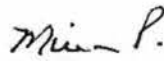
1 NSA's flexibility and significantly slow its ability to respond to fast-moving threat scenarios and
2 evolving efforts by our adversaries to evade detection through frequent shifts in their
3 communication patterns or platforms. Such a warrant requirement would also impose an
4 extraordinary burden on the NSA's intelligence resources, diverting resources from mission
5 critical activities. And, finally, the delays inherent in such a requirement would impede the
6 NSA's ability to collect critical and time-sensitive foreign intelligence information. Critical
7 intelligence would be lost.

8 **(U) Conclusion**

9 34. (U) The information set forth in the classified paragraphs above fall within the
10 NSA's assertion of statutory privilege under Section 6 of the National Security Agency Act,
11 which, in turn, formed the basis of the DNI's assertion of the state secrets privilege and so cannot
12 be disclosed for purposes of addressing the allegations in Plaintiffs' Combined Reply in Support
13 of their Motion for Partial Summary Judgment and Opposition to the Government Defendants'
14 Cross-Motion for Partial Summary Judgment (or for any other purpose) without risking
15 exceptionally grave damage to national security.

16 (U) I declare under penalty of perjury that the foregoing is true and correct.

17 DATE: November 7, 2014

18 

19 _____
20 (U) Miriam P.
21 (U) Deputy Chief of Staff for
22 SIGINT Policy and Corporate Issues, Signals
23 Intelligence Directorate

~~TOP SECRET//SI//NOFORN~~