

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

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

FILED WITH THE
COURT CLERK'S OFFICER
CSO: [REDACTED]
DATE: 5/12/06

3 TASH HEPTING, GREGORY HICKS,)
4 CAROLYN JEWEL, and ERIK KNUTZEN,)
On Behalf of Themselves and All Others)
5 Similarly Situated,)
6 Plaintiffs,)
7 v.)
8 AT&T CORP., AT&T INC., and)
9 DOES 1-20, inclusive,)
10 Defendants.)
11

Case No. C-06-0672-VRW

**CLASSIFIED DECLARATION
OF LT. GEN. KEITH B.
ALEXANDER, DIRECTOR,
NATIONAL SECURITY
AGENCY**

**SUBMITTED IN CAMERA,
EX PARTE**

Hon. Vaughn R. Walker

12 ***IN CAMERA, EX PARTE* DECLARATION OF LIEUTENANT GENERAL**
13 **KEITH B. ALEXANDER, DIRECTOR, NATIONAL SECURITY AGENCY**

14 (U) I, Lieutenant General Keith B. Alexander, do hereby state and declare as follows:

15 (U) Introduction and Summary

16 1. (U) I am the Director of the National Security Agency (NSA), an intelligence
17 agency within the Department of Defense. I am responsible for directing the NSA, overseeing
18 the operations undertaken to carry out its mission and, by specific charge of the President and the
19 Director of National Intelligence, protecting NSA activities and intelligence sources and
20 methods. I have been designated an original TOP SECRET classification authority under
21 Executive Order No. 12958, 60 Fed. Reg. 19825 (1995), as amended on March 25, 2003, and
22 Department of Defense Directive No. 5200.1-R, Information Security Program Regulation, 32
23 C.F.R. § 159a.12 (2000).
24

25
26 2. (U) The purpose of this declaration is to support the assertion of a formal claim of
27 the military and state secrets privilege (hereafter "state secrets privilege") by the Director of
28

Derived From: NSA/CSSM 1-52
Dated: 20041123
Declassify On: MR

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

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1 National Intelligence (DNI) as the head of the intelligence community. In this declaration, I also
2 assert a statutory privilege with respect to information about NSA activities. For the reasons
3 described below, the disclosure of the information covered by these privilege assertions would
4 cause exceptionally grave damage to the national security of the United States. The statements
5 made herein are based on my personal knowledge of NSA activities and operations, and on
6 information available to me as Director of the NSA.
7

8 3. ~~(TS//SI [REDACTED]//TSP//OC/NF)~~ This lawsuit implicates several highly
9 classified and critically important NSA intelligence activities and, in particular, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] Plaintiffs, in fact, have put at issue activities that have been considered and
22 approved by the FISC, which has authorized NSA to conduct a bulk collection of non-content
23 header/router/addressing information (hereafter referred to as "meta data") related to Internet
24 communications for the vital purpose of uncovering the contacts [REDACTED] of
25

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 For example, NSA collects bulk meta data related to telephone communications in order to

4 conduct specific and targeted analysis to track [REDACTED]—a highly useful and

5 critical tool like the Internet meta data collection. Also, although Plaintiffs wrongly claim that

6 NSA is collecting and searching, on a massive scale, the content of millions of communications

7 sent or received inside the United States, NSA does collect the content of certain international

8 telephone and Internet communications that involve an agent or member of al Qaeda or an

9 associated terrorist organization that either originate or terminate outside the United States.

10 Although the President has acknowledged the existence of that narrowly targeted collection—

11 [REDACTED]—information about this program remains highly classified. The

12 assertion of the state secrets privilege by the Director of National Intelligence and NSA's

13 statutory privilege is essential to protect the national security of the United States. Moreover, in

14 my opinion, because the very subject matter of this lawsuit concerns state secrets, and the risk of

15 their disclosure is so great, this action should be dismissed.

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(U) Table of Contents

4. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ To facilitate the Court's review, the remainder of this declaration is organized as follows:

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Background	Page	[REDACTED]
A. The National Security Agency	Page	[REDACTED]
B. September 11, 2001	Page	[REDACTED]
C. Intelligence Challenges After September 11, 2001	Page	[REDACTED]
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Information Subject to Claims of Privilege	Page	[REDACTED]
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(4) The Terrorist Surveillance Program	Page	[REDACTED]
(a) Focus of the TSP on al Qaeda Terrorist Targets	Page	[REDACTED]
(b) Importance of the TSP and Mata Data Analysis	Page	[REDACTED]
B. Information Confirming or Denying Intelligence Targets	Page	[REDACTED]
Harm to National Security from Disclosure	Page	[REDACTED]
Risk of Allowing Litigation to Proceed	Page	[REDACTED]
Summary and Conclusion	Page	[REDACTED]

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

(U) Classification of Declaration

1

2

3 5. ~~(S)~~ This declaration is classified TOP SECRET//COMINT [REDACTED]

4 [REDACTED]//TSP//ORCON/NOFORN//MR pursuant to the standards in Executive Order No.

5 12958, as amended by Executive Order No. 13292. Under Executive Order No. 12958,

6 information is classified "TOP SECRET" if unauthorized disclosure of the information

7 reasonably could be expected to cause exceptionally grave damage to the national security of the

8 United States; "SECRET" if unauthorized disclosure of the information reasonably could be

9 expected to cause serious damage to national security; and "CONFIDENTIAL" if unauthorized

10 disclosure of the information reasonably could be expected to cause identifiable damage to

11 national security. At the beginning of each paragraph of this declaration, the letter or letters in

12 parentheses designate(s) the degree of classification of the information the paragraph contains.

13 When used for this purpose, the letters "U," "C," "S," and "TS" indicate respectively that the

14 information is either UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP

15 SECRET.²

16

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18 6. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented

19 Information (SCI), which is "information that not only is classified for national security reasons

20 as Top Secret, Secret, or Confidential, but also is subject to special access and handling

21

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23 ² ~~(TS//SI//NF)~~ [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

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1 requirements because it involves or derives from particularly sensitive intelligence sources and
2 methods." 28 C.F.R. § 17.18(a). Because of the exceptional sensitivity and vulnerability of such
3 information, these safeguards and access requirements exceed the access standards that are
4 normally required for information of the same classification level. Specifically, this declaration
5 references communications intelligence (COMINT), also referred to as special intelligence (SI),
6 which is a subcategory of SCI. COMINT or SI identifies SCI that was derived from exploiting
7 cryptographic systems or other protected sources by applying methods or techniques, or from
8 intercepted foreign communications.
9

10 7. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ This declaration also contains information
11 related to or derived from the Terrorist Surveillance Program (TSP), a controlled access signals
12 intelligence program authorized by the President in response to the attacks of September 11,
13 2001. Although the President publicly acknowledged the existence of the TSP in December
14 2005, details about the program remain highly classified and strictly compartmented.
15 Information pertaining to this program is denoted with the special marking "TSP" and requires
16 more restrictive handling.
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[REDACTED]

27 3 (U) [REDACTED]

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[REDACTED]

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

1 8. (S) In addition to the fact that classified information contained herein may not be
 2 revealed to any person without authorization pursuant to Executive Order 12958, as amended,
 3 this declaration contains information that may not be released to foreign governments, foreign
 4 nationals, or non-U.S. citizens without permission of the originator and in accordance with DNI
 5 policy. This information is labeled "NOFORN." The "ORCON" designator means that the
 6 originator of the information controls to whom it is released. Finally, this document is marked
 7 Manual Review ("MR") indicating that it is not subject to automatic declassification at any
 8 specific date.

(U) BackgroundA. (U) The National Security Agency

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 13 9. (U) The NSA was established by Presidential Directive in 1952 as a separately
 14 organized agency within the Department of Defense. Under Executive Order 12333, § 1.12(b),
 15 as amended, NSA's cryptologic mission includes three functions: (1) to collect, process, and
 16 disseminate signals intelligence (SIGINT) information, of which COMINT is a significant
 17 subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c)
 18 the support of military operations; (2) to conduct information security activities; and (3) to
 19 conduct operations security training for the U.S. Government.

20
 21 10. ~~(TS//SI)~~ Signals intelligence (SIGINT) consists of three subcategories:
 22 (1) communications intelligence (COMINT); (2) electronic intelligence (ELINT); and (3) foreign
 23 instrumentation signals intelligence (FISINT). Communications intelligence (COMINT) is
 24 defined as "all procedures and methods used in the interception of communications and the
 25 obtaining of information from such communications by other than the intended recipients." 18
 26
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1 U.S.C. § 798. COMINT includes information derived from the interception of foreign and
 2 international communications, such as voice, facsimile, and computer-to-computer information
 3 conveyed via a number of means [REDACTED]

4 [REDACTED] Electronic intelligence (ELINT) is technical intelligence information derived from
 5 foreign non-communications electromagnetic radiations except atomic detonation or radioactive
 6 sources—in essence, radar systems affiliated with military weapons platforms (e.g., anti-ship)
 7 and civilian systems (e.g., shipboard and air traffic control radars). Foreign instrumentation
 8 signals intelligence (FISINT) is derived from non-U.S. aerospace surfaces and subsurface
 9 systems which may have either military or civilian applications.
 10

11 11. (S) NSA's SIGINT responsibilities include establishing and operating an effective
 12 unified organization to conduct SIGINT activities set forth in Executive Order No. 12333, §
 13 1.12(b), as amended. In performing its SIGINT mission, NSA has developed a sophisticated
 14 worldwide SIGINT collection network that acquires, among other things, foreign and
 15 international electronic communications and related information. The technological
 16 infrastructure that supports NSA's foreign intelligence information collection network has taken
 17 years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated
 18 collection and processing technology.
 19

20 12. (S) There are two primary reasons for gathering and analyzing foreign
 21 intelligence information. The first, and most important, is to gain as much information as
 22 possible in order to allow the United States to counter threats to the nation's security. The
 23 second reason is to obtain information critical to the formulation of U.S. foreign policy. Foreign
 24 intelligence information provided by NSA is thus relevant to a wide range of important issues,
 25 including (but not limited to) military order of battle; threat warnings and readiness; arms
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 proliferation; international terrorism; and foreign aspects of international narcotics trafficking.

13. ~~(S)~~ NSA's ability to produce foreign intelligence information depends on its access to foreign and international electronic communications. Foreign intelligence produced by COMINT activities is an extremely important part of the overall foreign intelligence information available to the United States and is often unobtainable by other means. Public disclosure of either the capability to collect specific communications or the substance of the information derived from such collection itself can easily alert targets to the vulnerability of their communications. Disclosure of even a single communication holds the potential of revealing intelligence collection techniques that are applied against targets around the world. Once alerted, targets can frustrate COMINT collection by using different or new encryption techniques, by disseminating disinformation, or by utilizing a different communications link. Such evasion techniques may inhibit access to the target's communications and therefore deny the United States access to information crucial to the defense of the United States both at home and abroad. COMINT is provided special statutory protection under 18 U.S.C. § 798, which makes it a crime to knowingly disclose to an unauthorized person classified information "concerning the communication intelligence activities of the United States or any foreign government."

B. (U) September 11, 2001

14. (U) On September 11, 2001, the al Qaeda terrorist network launched a set of coordinated attacks along the East Coast of the United States. Four commercial jetliners, each carefully selected to be fully loaded with fuel for a transcontinental flight, were hijacked by al Qaeda operatives. Those operatives targeted the Nation's financial center in New York with two of the jetliners, which they deliberately flew into the Twin Towers of the World Trade Center. Al Qaeda targeted the headquarters of the Nation's Armed Forces, the Pentagon, with the third

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1 jetliner. Al Qaeda operatives were apparently headed toward Washington, D.C. with the fourth
2 jetliner when passengers struggled with the hijackers and the plane crashed in Shanksville,
3 Pennsylvania. The intended target of this fourth jetliner was most evidently the White House or
4 the Capitol, strongly suggesting that al Qaeda's intended mission was to strike a decapitation
5 blow to the Government of the United States—to kill the President, the Vice President, or
6 Members of Congress. The attacks of September 11 resulted in approximately 3,000 deaths—
7 the highest single-day death toll from hostile foreign attacks in the Nation's history. In addition,
8 these attacks shut down air travel in the United States, disrupted the Nation's financial markets
9 and government operations, and caused billions of dollars of damage to the economy.
10

11 15. (U) On September 14, 2001, the President declared a national emergency "by
12 reason of the terrorist attacks at the World Trade Center, New York, New York, and the
13 Pentagon, and the continuing and immediate threat of further attacks on the United States."
14 Proclamation No. 7463, 66 Fed. Reg. 48199 (Sept. 14, 2001). The United States also launched a
15 massive military response, both at home and abroad. In the United States, combat air patrols
16 were immediately established over major metropolitan areas and were maintained 24 hours a day
17 until April 2002. The United States also immediately began plans for a military response
18 directed at al Qaeda's training grounds and haven in Afghanistan. On September 14, 2001, both
19 Houses of Congress passed a Joint Resolution authorizing the President "to use all necessary and
20 appropriate force against those nations, organizations, or persons he determines planned,
21 authorized, committed, or aided the terrorist attacks" of September 11. Authorization for Use of
22 Military Force, Pub. L. No. 107-40 § 21(a), 115 Stat. 224, 224 (Sept. 18, 2001) ("Cong. Auth.").
23 Congress also expressly acknowledged that the attacks rendered it "necessary and appropriate"
24 for the United States to exercise its right "to protect United States citizens both at home and
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[REDACTED]

~~TOP SECRET//COMINT [REDACTED] //SI//ORCON//NOFORN//MR~~

1 abroad," and acknowledged in particular that "the President has authority under the Constitution
 2 to take action to deter and prevent acts of international terrorism against the United States." *Id.*
 3 pmbl.

4 16. (U) As the President made clear at the time, the attacks of September 11 "created
 5 a state of armed conflict." Military Order, § 1(a), 66 Fed. Reg. 57833, 57833 (Nov. 13, 2001).
 6 Indeed, shortly after the attacks, NATO took the unprecedented step of invoking article 5 of the
 7 North Atlantic Treaty, which provides that an "armed attack against one or more of [the parties]
 8 shall be considered an attack against them all." North Atlantic Treaty, Apr. 4, 1949, art. 5, 63
 9 Stat. 2241, 2244, 34 U.N.T.S. 243, 246; see also Statement by NATO Secretary General Lord
 10 Robertson (Oct. 2, 2001), available at <http://www.nato.int/docu/speech/2001/s011002a.htm> ("[I]t
 11 has now been determined that the attack against the United States on 11 September was directed
 12 from abroad and shall therefore be regarded as an action covered by Article 5 of the Washington
 13 Treaty . . ."). The President also determined that al Qaeda terrorists "possess both the capability
 14 and the intention to undertake further terrorist attacks against the United States that, if not
 15 detected and prevented, will cause mass deaths, mass injuries, and massive destruction of
 16 property, and may place at risk the continuity of the operations of the United States
 17 Government," and he concluded that "an extraordinary emergency exists for national defense
 18 purposes." Military Order, § 1(c), (g), 66 Fed. Reg. at 57833-34.

19 C. (U) Intelligence Challenges After September 11, 2001

20 17. (U) As a result of the unprecedented attacks of September 11, 2001, the United
 21 States found itself immediately propelled into a worldwide war against a network of terrorist
 22 groups, centered on and affiliated with al Qaeda, that possesses the evolving capability and
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1 intention of inflicting further catastrophic attacks on the United States. That war is continuing
2 today, at home as well as abroad.

3 18. (U) The war against al Qaeda and its allies is a very different kind of war, against
4 a very different enemy, than any other war or enemy the Nation has previously faced. Al Qaeda
5 and its supporters operate not as a traditional nation-state but as a diffuse, decentralized global
6 network of individuals, cells, and loosely associated, often disparate groups, that act sometimes
7 in concert, sometimes independently, and sometimes in the United States, but always in secret—
8 and their mission is to destroy lives and to disrupt a way of life through terrorist acts. Al Qaeda
9 works in the shadows; secrecy is essential to al Qaeda's success in plotting and executing its
10 terrorist attacks.
11

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

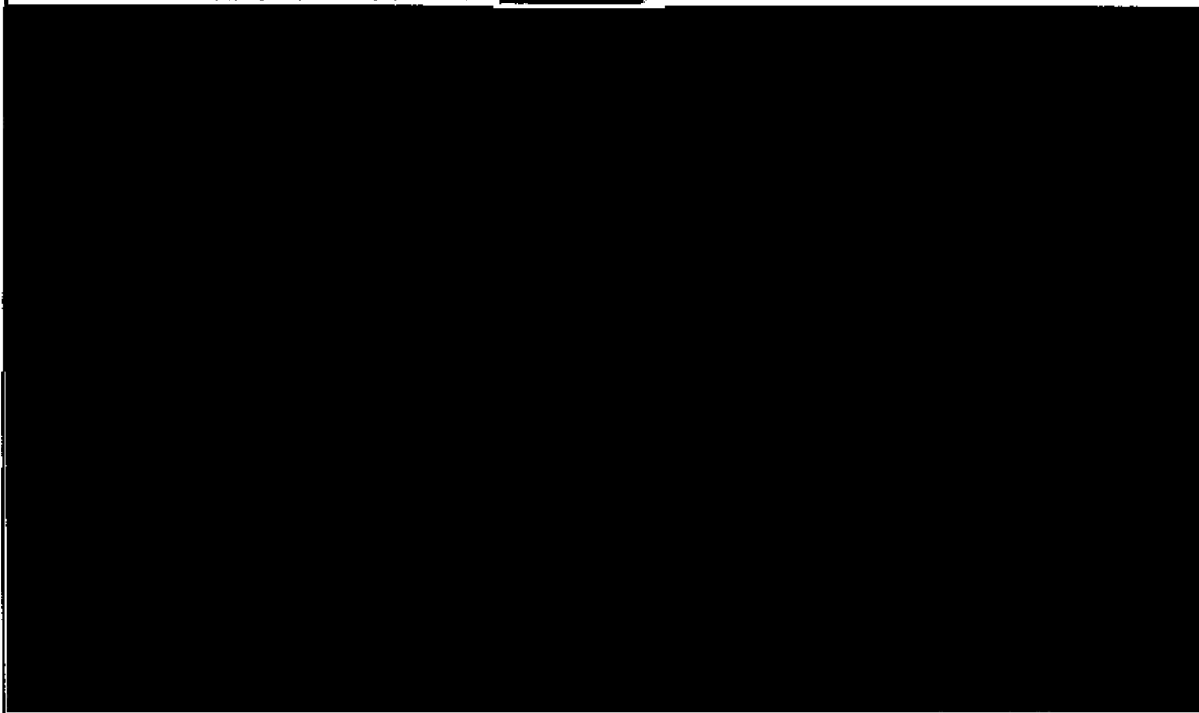
15 [REDACTED] Global telecommunications networks, especially the Internet, have
16 developed in recent years into a loosely interconnected system—a network of networks—that is
17 ideally suited for the secret communications needs of loosely affiliated terrorist cells. Hundreds
18 of Internet service providers, or "ISPs," and other providers of communications services offer a
19 wide variety of global communications options, often free of charge. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ⁴ ~~(TS//SI//OC/NF)~~ [REDACTED]
28 [REDACTED]

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[REDACTED]

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



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13 20. ~~(TS//SI)~~ Our efforts against al Qaeda and its affiliates therefore present critical
14 challenges for the Nation's communications intelligence capabilities. First, in this new kind of
15 war, more than in any other we have ever faced, communications intelligence is essential to our
16 ability to identify the enemy and to detect and disrupt its plans for further attacks on the United
17 States. Communications intelligence often is the only means we have to learn the identities of
18 particular individuals who are involved in terrorist activities and the existence of particular
19 terrorist threats. Second, at the same time that communications intelligence is more important
20 than ever, the decentralized, non-hierarchical nature of the enemy and their sophistication in
21 exploiting the agility of modern telecommunications make successful communications
22 intelligence more difficult than ever.
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1 D. (U) Summary of NSA Activities Critical to Meeting Post-9/11 Intelligence Challenges

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3 21. ~~(TS//SI [REDACTED]//OC/NF)~~ To meet these challenges and to prevent another
4 catastrophic terrorist attack within the United States, the United States has utilized a number of
5 critically important intelligence tools that are implicated by the allegations in this case. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 22. ~~(TS//SI//TSP//OC/NF)~~ Another critical tool for meeting the post-9/11 intelligence
23 challenge is the Terrorist Surveillance Program (TSP), which the President authorized
24 specifically to detect and prevent terrorist attacks within the United States by members or agents
25 of al Qaeda or an associated terrorist organization. Pursuant to the TSP, NSA intercepts the
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 1 content⁵ of telephone or Internet communications for which there are reasonable grounds to
 2 believe that (1) such communication originated or terminated outside the United States, *and* (2) a
 3 party to such communication is a member of al Qaeda, a member of a group affiliated with al
 4 Qaeda, or an agent of al Qaeda or its affiliates. Recently, in December 2005, and in the wake of
 5 media leaks, the President acknowledged the existence of the TSP. Critical details about the
 6 TSP, however, have not been disclosed and remain highly classified and strictly
 7 compartmented.⁶

9 23. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ NSA also collects *non-content* communication
 10 information known as "meta data" [REDACTED] The collection of
 11 meta data related to Internet communications is conducted pursuant to an Order of the Foreign
 12 Intelligence Surveillance Court authorizing the use of a pen register and trap and trace device
 13 ("FISA Pen Register Order"). See 18 U.S.C. § 3127 (defining "pen register" and "trap and trace
 14 device").⁷ Internet communication meta data is header/router/addressing information, such as
 15 the "to," "from," "cc," and "bcc" lines, as opposed to the body or "re" lines, of a standard email.
 16 Specifically, the FISA Court has authorized NSA to collect, in bulk, meta data associated with
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21 ⁵ ~~(TS//SI//TSP//OC/NF)~~ Throughout this declaration, "content" is used to refer to the
 22 substance, meaning, or purport of a communication, as opposed to the type of addressing or
 23 routing information referred throughout this declaration as "meta data."

24 ⁶ (U) These details, and the harm that would follow from their public disclosure, are
 25 explained more fully below.

26 ⁷ ~~(TS//SI//OC/NF)~~ The FISA Pen Register Order was first issued in July 2004 and since
 27 then has been reauthorized by the Court approximately every 90 days. Prior to July 2004, the
 28 email meta data activities described herein were conducted by NSA pursuant to Presidential
 authorization issued after September 11, 2001.

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1 electronic communications [REDACTED] on the Internet.⁸ [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Although the NSA collects
7 email meta data in bulk [REDACTED] it is only authorized to query the archived meta data
8 using email addresses for which there are facts giving rise to a reasonable, articulable suspicion
9 that the email address is associated with [REDACTED] As the
10 FISA Court recognized in authorizing the pen register and in finding it consistent with the First
11 and Fourth Amendments, the bulk collection is necessary to allow NSA to use critical and unique
12 analytical capabilities to track the contacts (even retrospectively) [REDACTED] of
13 known terrorists. Meta data collection/analysis is a highly valuable tool available for protecting
14 the United States from attack, and, accordingly, information pertaining to the email meta data
15 collection activities is highly classified and strictly compartmented.
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18 24. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ In addition, pursuant to an authorization of the
19 President, NSA is collecting in bulk meta data for telephony communications in the form of
20 billing records that reflect non-content information such as the date, time, and duration of
21 telephone calls, as well as the phone numbers used to place and receive the calls. Although this
22 collection is broad in scope, the NSA does not generally search or analyze the data, but solely
23

24 ⁸ ~~(TS//SI//OC/NF)~~ [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 CLASSIFIED DECLARATION OF LT. GEN.
KEITH B. ALEXANDER, DIRECTOR,
NATIONAL SECURITY AGENCY
CASE NO. C-06-0672-VRW

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

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

1 queries the data with an identified telephone numbers for which there are facts giving rise to a
2 reasonable, articulable suspicion that the number is associated with [REDACTED]

3 [REDACTED] As with the broad email meta data collection authorized by the FISC, the bulk
4 collection of telephony meta data is necessary to allow the utilization of sophisticated analytical
5 tools for tracking the contacts [REDACTED]

6 Historically, only a tiny fraction [REDACTED] of telephony
7 meta data records collected by NSA has actually been presented to a trained professional for
8 analysis. [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Like the email meta data collection activities, telephony meta
12 data collection and analysis are highly valuable tools in tracking terrorists and are therefore
13 highly classified and strictly compartmented.

14 (U) State Secrets Privilege

15
16 25. ~~(TS//SI//NF)~~ In the course of my official duties I have been advised of this
17 litigation and have reviewed the allegations in the Plaintiffs' Amended Complaint and Motion
18 for a Preliminary Injunction. As described herein, various classified facts or categories of
19 classified information related to the Plaintiffs' claims are subject to the state secrets privilege
20 assertion in this case by the Director of National Intelligence. The disclosure of this information,
21 which relates to NSA intelligence activities, sources and methods, reasonably could be expected
22 to cause exceptionally grave damage to the national security of the United States. In addition, it
23 is my judgment that sensitive state secrets are so central to the subject matter of the litigation that
24 any attempt to proceed in the case will substantially risk the disclosure of the secrets described
25 herein and will cause exceptionally grave damage to the national security of the United States.
26
27
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR-~~
(U) NSA Statutory Privilege

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2 26. ~~(TS//SI//NF)~~ Through this declaration, I also hereby invoke and assert NSA's
3 statutory privilege to protect information related to NSA activities described below. NSA's
4 statutory privilege is set forth in section 6 of the National Security Agency Act of 1959, Public
5 Law No. 86-36 (codified as a note to 50 USC. § 402) ("NSA Act"). Section 6 of the NSA Act
6 provides that "[n]othing in this Act or any other law . . . shall be construed to require the
7 disclosure of the organization or any function of the National Security Agency [or] any
8 information with respect to the activities thereof . . .". By this language Congress expressed its
9 determination that disclosure of any information relating to NSA activities is potentially harmful.
10 Section 6 states unequivocally that, notwithstanding any other law, NSA cannot be compelled to
11 disclose any information with respect to its activities. Further, while in this case the harm would
12 be very serious, NSA is not required to demonstrate specific harm to national security when
13 invoking this statutory privilege, but only to show that the information relates to its activities. To
14 invoke this privilege, NSA must demonstrate only that the information to be protected falls
15 within the scope of section 6. NSA's functions and activities are therefore protected from
16 disclosure regardless of whether or not the information is classified.

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20 (U) Information Subject to Claims of Privilege

21 27. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ NSA information related to the Plaintiffs'
22 claims that is subject to the state secrets privilege asserted by the Director of National
23 Intelligence, and to NSA's statutory privilege which I assert herein, includes the following:⁹
24
25

26 ⁹ (U) In addition to asserting the state secrets privilege with respect to the NSA
27 information described herein, the Director of National Intelligence, in his accompanying
28 declaration, also asserts the privilege with respect to specific threat information regarding al
Qaeda and its affiliates.

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[REDACTED]

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

A. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ NSA Sources and Methods at Issue

- (1) [REDACTED]
- (2) [REDACTED]
- (3) Meta Data Collection and Analysis
- (4) The Terrorist Surveillance Program

- (a) Focus of the TSP on al Qaeda Terrorist Targets
- (b) Importance of the TSP

B. ~~(C)~~ Information Confirming or Denying Intelligence Targets

28. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ In the face of grave and immediate threats of mass-casualty terrorist attacks within the United States, the President has authorized signals intelligence activities designed to detect and prevent such attacks. As discussed in detail below, in carrying out these activities, the NSA utilizes various sources and methods, [REDACTED]

[REDACTED]

The state secrets related to this lawsuit are described in further detail below. I

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

1 also discuss separately the grave harm to national security that would occur if that information
2 were to be disclosed in this litigation.

3 A. (U) NSA Sources and Methods

4 29. ~~(TS//SI [REDACTED]//OC/NF)~~ Plaintiffs' Amended Complaint puts at issue a range
5 of NSA's classified intelligence activities, including activities authorized by the President and
6 the Foreign Intelligence Surveillance Court and designed to prevent and detect terrorist attacks
7 within the United States. To carry out such activities, [REDACTED] as detailed
8 in this declaration. The sources and methods at issue in this litigation are described in further
9 detail below.
10

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

12 30. ~~(TS//SI [REDACTED]//OC/NF)~~ [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

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

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(3) ~~(TS//SI [REDACTED] //OC/NF)~~ Meta Data Collection and Analysis

37. ~~(TS//SI [REDACTED] //OC/NF)~~ The Plaintiffs' Amended Complaint in this case also puts at issue sources and methods for surveillance activities conducted pursuant to orders of the Foreign Intelligence Surveillance Court. For example, Paragraph 38 of the Amended Complaint alleges that "besides actually eavesdropping on specific conversations, NSA personnel have intercepted large volumes of domestic and international telephone and Internet traffic in search of patterns of interest, in what has been described in press reports as a large 'data mining' program." Am. Complaint ¶ 38. Plaintiffs allege in particular that AT&T has assisted the government in installing "interception devices," "pen registers" and "trap and trace" devices in order to "acquire the content" of communications and receive "dialing, routing, addressing, or signaling information." Am. Complaint ¶¶ 42-47.

38. ~~(TS//SI//TSP//OC/NF)~~ Plaintiffs' allegations implicate foreign intelligence collection activities undertaken by NSA after September 11 in addition to the publicly described TSP. Because these activities have not been publicly disclosed or confirmed, information about their existence and operational details are especially sensitive. Disclosure of these activities will cause exceptionally grave damage to U.S. national security.

39. ~~(TS//SI [REDACTED] //OC/NF)~~ First, as noted above, NSA collects and conducts targeted analysis of information known as "meta data," which is non-content

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

1 header/router/addressing information for certain communications, such as the "to," "from," "cc,"
2 and "bcc" lines (as opposed to the body or "re" lines) of a standard email. Pursuant to the FISA
3 Pen Register Order, NSA collects, in bulk, meta data associated with electronic communications

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 NSA is authorized by the Foreign Intelligence Surveillance Court to query the archived
9 meta data only using email addresses for which, based on the factual and practical considerations
10 of everyday life on which reasonable and prudent persons act, there are facts giving rise to a
11 reasonable, articulable suspicion that the email address is associated with [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 40. ~~(TS//SI//TSP//OC/NF)~~ The FISA court authorized bulk collection of email meta
16 data allows NSA to use critical and unique analytical capabilities to track the contacts [REDACTED]
17 [REDACTED] of known terrorists through the use of highly sophisticated "contact
18 chaining" [REDACTED] algorithms. Contact-chaining queries allow the NSA to identify
19 those Internet-based accounts that have been in contact with known terrorist accounts; in turn,
20 those contacts can be targeted for immediate query and analysis as new terrorist-associated
21 addresses are identified. This tool has been highly useful in detecting previously unknown
22 terrorists and unknown terrorist accounts for further surveillance or potential content collection
23 under the TSP.
24

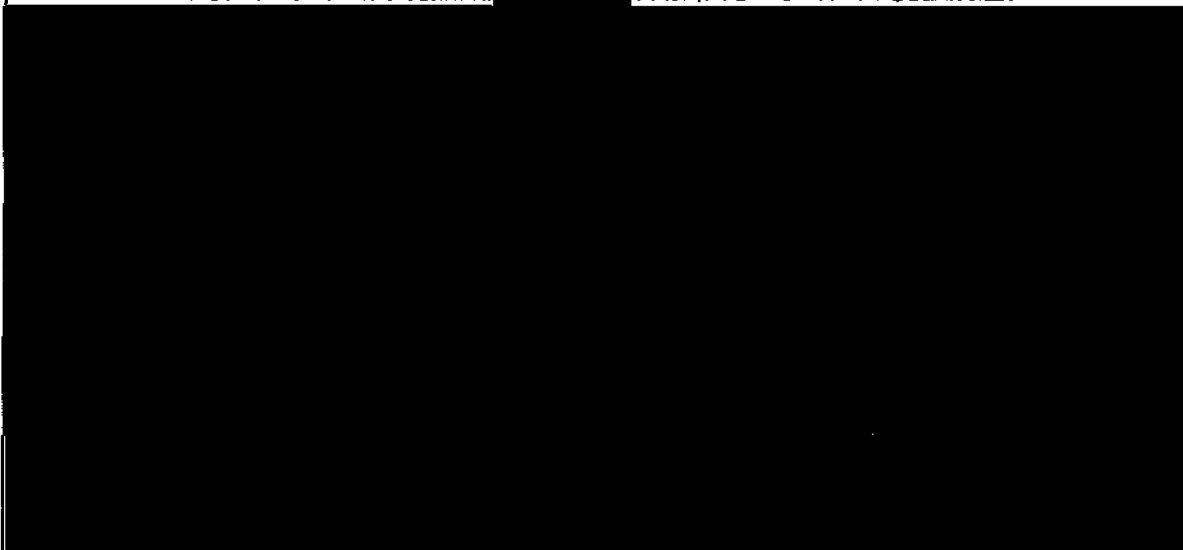
25
26 41. ~~(TS//SI//TSP//OC/NF)~~ Contact-chaining queries also return the meta data
27 that identify the internet protocol ("IP") address from which email accounts have been accessed.
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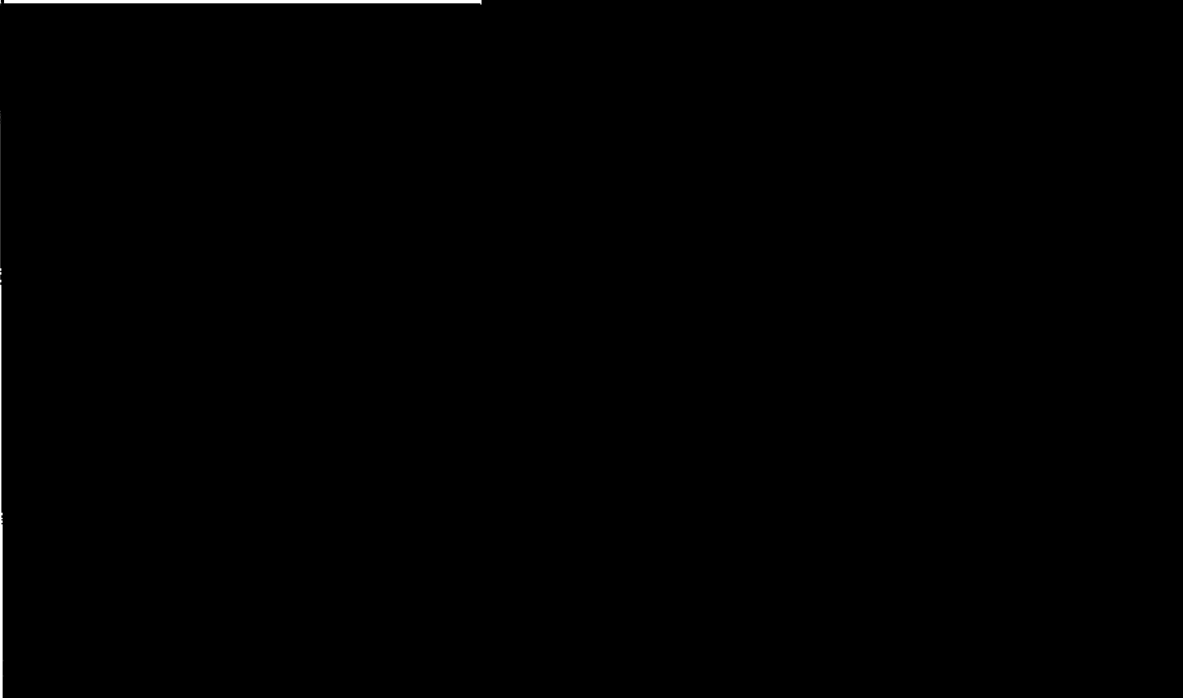
~~TOP SECRET//COMINT//SI~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~
[REDACTED]

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

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42. ~~(TS//SI//TSP//OC/NF)~~



43. ~~(TS//SI//TSP//OC/NF)~~



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

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[REDACTED]

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.

44. ~~(TS//SI [REDACTED] //TSP//OC/NF)~~ Plaintiffs also allege that AT&T is providing the government with "direct access to its databases of stored telephone and Internet records" concerning communications to which Plaintiffs were a party. Am. Complaint ¶ 51-52. [REDACTED]

[REDACTED]

45. ~~(TS//SI [REDACTED] //TSP//OC/NF)~~ While the Plaintiffs' allegations concerning

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

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[REDACTED] are also inaccurate. In particular, Plaintiffs' allegation that NSA intercepts the content of millions of communications inside the United States, and seeks to search the content of those communications by means of key words, is simply wrong. Am.

Complaint ¶¶ 39; 43-46. [REDACTED]

[REDACTED] In fact, NSA intercepts the *content* of an Internet communication under the TSP *only if* there are reasonable grounds to believe that such communication originated or terminated outside the United States and that a party to such communication is a member or agent of al Qaeda or an affiliated terrorist organization. In addition, NSA's bulk collection of email meta data does not collect the content of the communication, and such meta data is collected [REDACTED]

Moreover, this email meta data collection and analysis is being undertaken pursuant to an authorization from the Foreign Intelligence Surveillance Court, and NSA is only authorized to query the archived meta data using email addresses for which there are facts giving rise to a reasonable, articulable suspicion that the email address is associated with [REDACTED]

[REDACTED] As set forth further below, the disclosure of these activities would cause exceptionally grave harm to the national security of the United States.

(4) (U) The Terrorist Surveillance Program

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~46. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED] Plaintiffs allege in their Amended Complaint that "NSA began
 4 a classified surveillance program shortly after September 11, 2001 to intercept the
 5 communications within the United States without judicial warrant." Am. Compl. ¶ 32. Plaintiffs
 6 cite in particular the President's statements that he authorized "the Program" in 2001 and has
 7 continued to re-authorize it. *Id.* ¶ 33. The Amended Complaint also refers to statements made
 8 by the President and Attorney General concerning the TSP. *Id.* ¶¶ 34-37.

10 47. ~~(TS//SI//TSP//OC/NF)~~ While the existence of the TSP is now publicly
 11 acknowledged, and some facts about the program have been disclosed, sensitive information
 12 about the nature, scope, operation, and effectiveness of the program remains classified and
 13 cannot be disclosed without causing exceptionally grave harm to U.S. national security. This
 14 information demonstrates that the TSP is a foreign intelligence collection program focused on
 15 detecting and preventing a foreign terrorist threat posed by al Qaeda and its affiliates, and does
 16 not involve the interception of content of domestic communications by U.S. persons that are
 17 unrelated to al Qaeda and its affiliates, and is an operationally swift and effective foreign
 18 intelligence tool.

21 (a) ~~(C)~~ Focus of the TSP on al Qaeda Terrorist Targets

22 48. ~~(TS//SI//TSP//OC/NF)~~ NSA action to intercept the content of communications
 23 under the TSP is triggered by a range of foreign intelligence information obtained or derived
 24 from various sources indicating that a particular phone number or email address is reasonably
 25 believed by the U.S. Intelligence Community to be associated with a member or agent of al
 26 Qaeda or associated terrorist organizations. Professional intelligence officers at NSA undertake
 27

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1 a careful but expeditious analysis of that information to determine whether it would be
2 appropriate to target a telephone number or email address under the TSP. No one piece of
3 information or source is relied upon by NSA to make that decision. Rather, NSA decides based
4 on a range of factors whether there are reasonable grounds to believe that a target for interception
5 is a member or agent of al Qaeda or associated terrorist organizations, including whether the
6 target phone number or email address: (1) is reasonably believed by the U.S. Intelligence
7 Community, based on other authorized collection activities or other law enforcement or
8 intelligence sources, to be used by a member or agent of al Qaeda or associated terrorist
9 organizations;
10 [REDACTED]

11 [REDACTED]
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 ¹² (TS//SI//TSP//OC/NF) [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

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

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49. ~~(TS//SI//TSP//OC/NF)~~ Once NSA has determined that a target under the TSP is reasonably believed to be [REDACTED] a member or agent of al Qaeda or associated terrorist organizations, NSA takes steps in the process of actually intercepting a communication to focus the interception on the specific al Qaeda-related target and [REDACTED]

[REDACTED] NSA's collection efforts are [REDACTED]

[REDACTED] In addition, NSA collects only those communications as to which it has reasonable grounds to believe that (1) one of the communicants is a member or agent of al Qaeda or associated terrorist organizations, and (2) the communication being collected is to or from a foreign country.

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

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[REDACTED]

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

[REDACTED]

52. ~~(TS//SI [REDACTED] /TSP//OC/NF)~~ NSA takes specific steps in the actual TSP interception process to minimize the risk that the communications of non-targets will be intercepted. With respect to the collection of telephone communications, specific telephone numbers identified through the analysis outlined above [REDACTED]

so that only the

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[REDACTED]

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

1 targeted number of a suspected member or agent of al Qaeda or associated terrorist organizations
2 is collected. For Internet communications, NSA uses identifying information obtained through
3 its analysis of the target, such as email addresses [REDACTED] to target Internet
4 communications of a suspected member or agent of al Qaeda or associated terrorist organizations
5 are collected. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 53. ~~(TS//SI//TSP//OC/NF)~~ In addition to procedures designed to ensure that the TSP
10 is limited to the international communications of al Qaeda members and affiliates, the NSA also
11 applies the existing Legal Compliance and Minimization Procedures applicable to U.S. persons.
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] In addition, the NSA Office of the General Counsel and Inspector
22 General provide continuing oversight over the program.¹³

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25
26 ¹³ (U) In addition, Congress recently authorized subcommittees of the House and Senate
27 Select Committees on Intelligence to undertake oversight responsibilities for the TSP, and these
28 subcommittees have commenced their review functions.

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54. ~~(TS//SI//TSP//OC/NF)~~ Second, NSA minimization procedures also require that NSA refrain from intentionally acquiring the communications of U.S. persons who are not the targets of its surveillance activities, that it destroy upon recognition any communications it acquires inadvertently that are solely between persons in the U.S., and that it refrain from identifying U.S. persons in its reports unless a senior NSA official determines that the recipient of the report requires such information in order to perform a lawful function assigned to it, and the identity of the U.S. person is necessary to understand the foreign intelligence or to assess its significance.

55. ~~(TS//SI//TSP//ORCON/NF)~~ [REDACTED]

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

(b) ~~(TS//SI [REDACTED] //TSP//OC/NF)~~ Importance of the TSP and Meta Data Analysis

1

2

3 56. ~~(TS//SI//TSP//OC/NF)~~ The TSP is designed to address an urgent need for NSA to

4 react with operational swiftness to meet the severity of the al Qaeda threat to the United States.

5 By utilizing meta data and contact chaining [REDACTED] described above, the NSA can

6 quickly search for multiple terrorist related collaborators at the same time and analyze those

7 targets quickly for interception under the TSP. This process greatly enhances the speed and

8 flexibility of the government's efforts to find enemy operatives in the United States and to obtain

9 actionable intelligence. In some cases, NSA can begin collection on a target phone number [REDACTED]

10 [REDACTED]

11 [REDACTED] to begin collection on a targeted phone

12 number or address.

13

14 57. ~~(TS//SI//TSP//OC/NF)~~ The TSP provides NSA far greater operational swiftness

15 and effectiveness than under current procedures for obtaining authorization for surveillance

16 under the Foreign Intelligence Surveillance Act. To the extent individual warrant applications

17 are required for individual targets under current FISA procedures, NSA would be unable to

18 obtain authorization in time to immediately collect operational information sent to and from new

19 phone numbers or Internet accounts, and valuable intelligence would be lost. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

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[REDACTED]

the TSP program, in conjunction with meta data collection and analysis, allows NSA to obtain rapidly not only the content of a particular communication, but connections between that target and other possible targets who may form a web of [REDACTED] conspirators. Indeed, because bulk meta data is archived, NSA may search to determine the *prior* contacts of [REDACTED] and gain a historical, as well as forward-looking perspective on potential threats. Where the gravest of dangers are at stake—a catastrophic mass casualty terrorist attack against the U.S. Homeland—it is vital that NSA obtain as broad a picture of terrorist communications as rapidly as possible in order to identify other targets based on new information. The TSP, in conjunction with meta data analysis, allows NSA this capability.

58. ~~(TS//SI//TSP//OC/NF)~~ A few success stories may help illustrate the point. The TSP and meta data collection activities have led to the development by NSA of actionable intelligence, much of which could not have been obtained by other means, and much of which has led to important and specific counter-terrorism efforts. Examples include the following:

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

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[REDACTED]

b. ~~(TS//SI//TSP//OC/NF)~~

[REDACTED]

c. ~~(TS//SI//TSP//OC/NF)~~

[REDACTED]

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

[REDACTED]

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

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d. ~~(TS//SI//TSP//OC/NF)~~

[REDACTED]

e. ~~(TS//SI//TSP//OC/NF)~~

[REDACTED]

59. ~~(TS//SI//NF)~~ The capability provided by the TSP and meta data analysis may also

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1 be illustrated by an example of when this tool was not utilized. According to the 9/11
 2 Commission report, when Khalid al-Mihdhar, one of the 9/11 hijackers, was in the United States
 3 from January 2000 to June 2001, he telephoned the home of his wife's family in Yemen. The
 4 phone number for this home in Yemen had well-established terrorist connections¹⁴ and was
 5 being targeted by NSA through an overseas collection process that did not have the capability to
 6 obtain meta-data to help identify the location of incoming calls. At the time, there was no FISA
 7 collection on this number, and neither the TSP program, under which NSA targets "one-end"
 8 foreign calls into the United States, nor collection of bulk meta data that would have allowed
 9 analysis of this number to ascertain other contact numbers, were in place. Had the Yemeni
 10 phone number been targeted using the TSP and meta data analysis, we should have been able to
 11 collect al-Mihdhar's one-end-U.S. calls from the U.S. to Yemen, and their interception would
 12 have provided leads for the FBI and CIA to investigate the matter further. Indeed, the 9/11
 13 Commission report noted that if the FBI had known that al Mihdhar was in the United States,
 14 "investigations or interrogation of [al Mihdhar], and investigation of [his] travel and financial
 15 activities could have yielded evidence of connections to other participants in the 9/11 plot. The
 16 simple fact of [his] detention could have derailed the plan. In any case, the opportunity did not
 17 arise." Final Report of the National Commission on Terrorist Attacks Upon the United States
 18 ("9/11 Commission Report") at 272. While there is an element of hindsight to this example, and
 19 perhaps other actions could have detected al Mihdhar, the existence of the TSP one-end
 20 collection and meta data analysis would have provided a highly significant tool that may have
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 26 ¹⁴ ~~(TS//SI//NF)~~ In August 1998, the number was found in the pocket of one of the
 27 would-be Kenyan Embassy bombers, who had fled the bomb-laden vehicle at the last minute.
 28 [REDACTED]

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1 proved most valuable in detecting the 9/11 plot.

2 60. ~~(TS//SI//TSP//OC/NF)~~ The foregoing discussion of the TSP, in particular its
3 vital connection to meta data collection and analysis, are important to understanding the need for
4 and highly targeted nature of this method for detecting and preventing foreign terrorist threats.
5 Based on my extensive military career and my role as the Director of the NSA, I believe that the
6 NSA activities discussed herein are among the most important intelligence tools available to the
7 United States for protecting the homeland from another catastrophic terrorist attack. In my view,
8 NSA could not have obtained critical intelligence that has been necessary to protect the Nation in
9 any other way. These NSA activities have given the United States unparalleled ability to
10 understand the interconnected groups and agents that al Qaeda has become. They also have
11 allowed us to identify and track terrorists [REDACTED]

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14 [REDACTED] However, while essential to understanding the program, disclosure
15 of this information would reveal sensitive and classified state secrets and, as set forth below,
16 would cause exceptionally grave harm to the national security of the United States.

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18 B. ~~(C)~~ Information Confirming or Denying Intelligence Targets

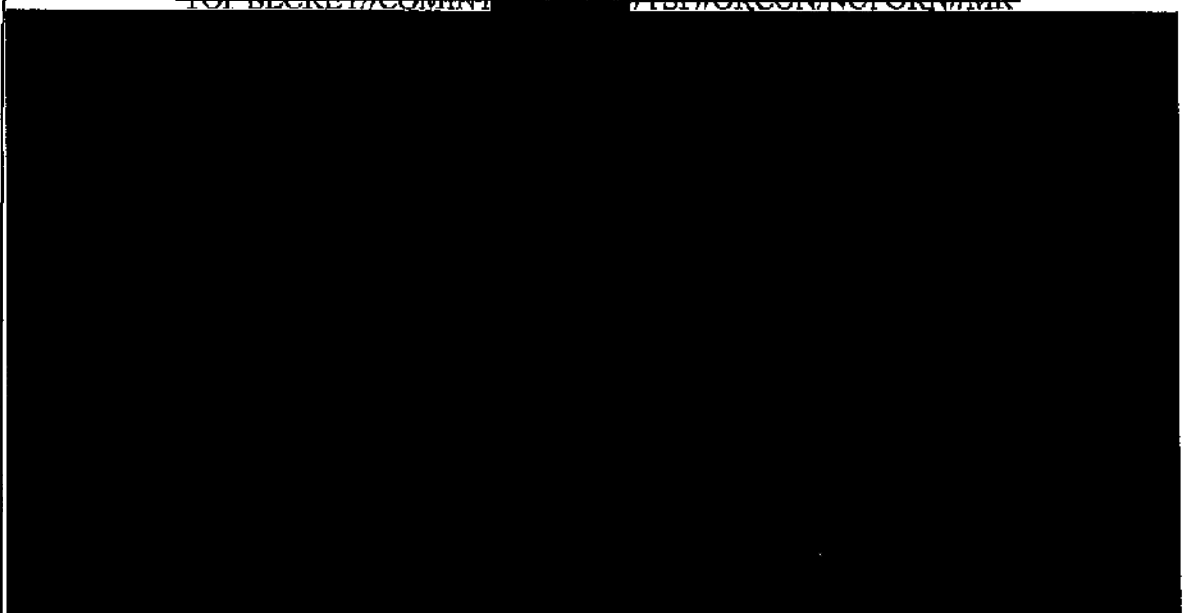
19 61. ~~(TS//SI//TSP//OC/NF)~~ The four Plaintiffs in this case—Tash Hepting, Gregory
20 Hicks, Carolyn Jewel, and Erik Knutzen—have alleged that AT&T has assisted NSA in
21 intercepting their individual communications. Specifically, the named Plaintiffs allege that the
22 content of their telephone and Internet communications and information related to those
23 communications are being intercepted, disclosed, divulged, and/or used without judicial or other
24 lawful authorization. *See, e.g.,* Am. Compl. ¶¶ 32-41; 47; 52; 64; 80-81; 92-93; 101-07; 112-16;
25 120; 127; 138. [REDACTED]

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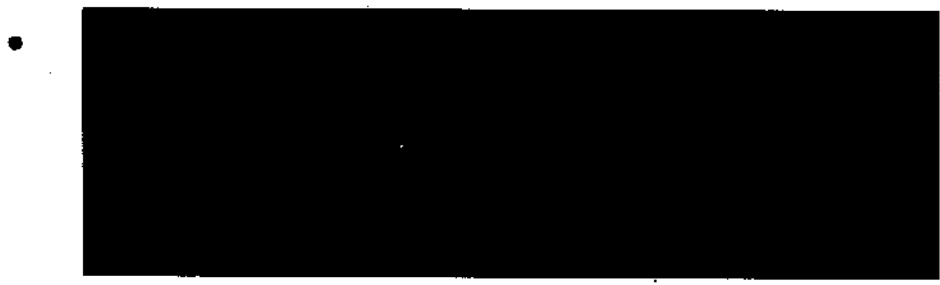
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~~(C)~~ Harm to National Security from Disclosure

62. ~~(TS//S~~ [REDACTED] ~~//TSP//OC/NF)~~ Upon examination of the allegations, claims, facts, and issues raised by this case, it is my judgment that disclosure of the information described above during the course of this litigation would cause exceptionally grave damage to the national security of the United States. I have personally reviewed the information upon which this declaration is based and I also assert NSA's statutory privileges to protect that information. Disclosure of the information described herein will harm national security by:

A. ~~(TS//S~~ [REDACTED] ~~//TSP//OC/NF)~~ Revealing the sources and methods concerning NSA intelligence-gathering activities, including by:



• Revealing the sources and methods concerning NSA's activities, including [REDACTED]

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

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[REDACTED] as well as activities designed for the purpose of detecting and preventing [REDACTED] attacks, such as the TSP and meta data collection and analysis, thereby enabling any foreign adversary, including [REDACTED] to compromise, detect, and evade NSA surveillance.

- Revealing information regarding the success of NSA activities implicated by this case, which would disclose the substantive knowledge of the United States Government as to terrorist plans and activities, and also could tend to reveal the sources and methods by which the United States obtained such information.¹⁵

B. ~~(TS//SI//TSP//OC/NF)~~ Revealing information regarding who is or is not targeted for surveillance by the NSA, or the basis on which individuals are targeted, thereby allowing any foreign adversary, [REDACTED] to compromise, detect, or evade U.S. surveillance operations.

The harm that would be caused by the disclosure of the information in each category at issue is described further below. It is especially important to note that even bits of information or seemingly innocuous facts can, in the context of this case or in conjunction with unclassified information, reveal a fuller picture of highly classified government activities and cause severe harm to national security interests.

A. ~~(TS//SI)~~ Harm of Disclosing NSA Sources and Methods

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

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

[REDACTED]

¹⁵ (S) As noted, the Director of National Intelligence has also asserted the state secrets privilege with respect to intelligence information demonstrating the serious threat of continued terrorist attacks by the al Qaeda terrorist network. See Declaration of John D. Negroponte.

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[REDACTED]

(3) ~~(TS//SI//TSP//OC/NF)~~ Harm of Disclosing Meta Data Collection and Analysis

70. ~~(TS//SI//TSP//OC/NF)~~ Disclosure of NSA activities to collect and analyze meta data, including that the Foreign Intelligence Surveillance Court has authorized Internet meta data collection, would cause exceptionally grave damage to the national security of the United States. NSA's collection of communications meta data is a vital tool for quickly assessing contacts and communications made by individuals suspected of a terrorist connection—information that may be far more useful than intercepting the contents of particular communications. The sophisticated algorithms NSA uses to conduct contact chaining [REDACTED] can, if employed on a sufficient volume of raw data, identify many telephone numbers, electronic addresses, and communications that are of interest for intelligence purposes. Meta data collection enables NSA to segregate some of that very small amount of otherwise undetectable but highly valuable information from the overwhelming amount of other information that has no intelligence value whatsoever—in colloquial terms, to find at least some of the needles hidden in the haystack. [REDACTED]

[REDACTED]

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[REDACTED]

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

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[REDACTED]

Disclosure of meta data collection would alert all of our foreign adversaries to these critical intelligence capabilities and thereby severely undermine NSA's ability to gather information concerning terrorist connections.

(4) ~~(C)~~ Harm of Disclosing Sources and Methods for TSP

71. ~~(TS//SI//TSP//OC/NF)~~ Disclosure of classified information about the Terrorist Surveillance Program would also reveal to hostile foreign adversaries specific intelligence sources and methods by which NSA conducts this surveillance, thereby providing key insights to foreign adversaries as to whether and how NSA is monitoring communications. Information about the specific foreign intelligence factors that trigger interception under the TSP would obviously reveal to foreign adversaries the very facts that would most likely lead to their communications being intercepted, thereby giving them a roadmap as to how to avoid such interception.

[REDACTED]

Likewise, disclosure of NSA's methodology of identifying and selecting certain phone numbers or Internet information would readily confirm to our adversaries key information that could be used by those adversaries to avoid interception.

72. ~~(TS//SI//TSP//OC/NF)~~ Similarly, information about the speed and agility with which NSA can collect content on a target, and how long it might maintain surveillance, would provide invaluable insights for an adversary to devise new and different ways to protect their communications. In particular, disclosure of NSA's ability to utilize TSP in conjunction with

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[REDACTED]

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

1 contact chaining [REDACTED] to determine with whom al Qaeda targets are
2 communicating would severely undermine efforts to detect terrorist activities. Armed with this
3 knowledge, an adversary could make more robust use [REDACTED]

4 [REDACTED] Also, as noted, [REDACTED]

6 [REDACTED] Compromising NSA's methods of surveillance, such as

7 [REDACTED]
8 the TSP, can easily lead to the use of alternatives that deprive U.S. decision-makers of critical
9 information needed to detect al Qaeda terrorist threats.

10 73. ~~(TS//SI//TSP//OC/NF)~~ Disclosure of the success of NSA activities implicated by
11 this case—which further demonstrate the compelling need for this program —would also
12 severely harm U.S. national security interests. Information about any of the successes of NSA
13 activities would not only be revealing of the substantive knowledge of the United States
14 Government as to terrorist plans and activities, but would also tend to reveal or confirm to all of
15 our foreign adversaries the sources and methods by which the United States obtained such
16 information, including the sources and methods of the TSP and meta data analysis.

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19 B. ~~(C)~~ Harm of Disclosing Information Confirming or Denying Intelligence Targets

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

21 [REDACTED]
22 [REDACTED] First, as a matter of course, NSA cannot

23 [REDACTED] publicly confirm or deny whether *any* individual is subject to the surveillance activities described
24 herein, because to do so would tend to reveal actual targets. For example, if NSA were to
25 confirm in this case and others that specific individuals are *not* targets of surveillance, but later
26 refuse to comment (as it would have to) in a case involving an actual target, a person could easily
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR~~

1 deduce by comparing such responses that the person in the latter case is a target. The harm of
2 revealing targets of foreign intelligence surveillance is obvious. If an individual knows or
3 suspects he is a target of U.S. intelligence activities, he would naturally tend to alter his behavior
4 to take new precautions against surveillance. Moreover, others might be able to draw
5 conclusions from the fact that certain people are, and certain people are not, targets of
6 surveillance.
7 [REDACTED]

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

22 Disclosing any of this information

23 would reveal some of the Nation's most sensitive and important intelligence-gathering methods
24 and, for reasons already discussed above, would cause exceptionally grave damage to the
25 national security by allowing al Qaeda and its affiliates to evade detection (as well as alerting
26 other foreign adversaries to these critical intelligence-gathering methods).
27

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

(U) Risk of Allowing Litigation to Proceed

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2 76. ~~(TS//S~~ [REDACTED] ~~//OC/NF)~~ Upon examination of the allegations, claims, facts
3 and issues raised by this case, it is my judgment that sensitive state secrets are so central to the
4 subject matter of the litigation that any attempt to proceed will substantially risk the disclosure of
5 the privileged state secrets described above. [REDACTED]

6
7
8 [REDACTED] In my judgment, any effort to probe the outer-bounds of classified
9 information would pose inherent and significant risks of the disclosure of classified information,
10 [REDACTED]

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13 77. ~~(TS//S~~ [REDACTED] ~~//OC/NF)~~ Indeed, any effort merely to allude to those facts in
14 a non-classified fashion could be revealing of classified details that should not be disclosed.
15 [REDACTED]

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18 [REDACTED] This is a classic
19 example of how some limited, non-classified information, combined with ignorance of the true
20 facts, can be used to speculate about, and risk the disclosure of, classified activities [REDACTED]

21 [REDACTED] As noted, even seemingly minor or innocuous
22 facts, in the context of this case or other non-classified information [REDACTED]
23 [REDACTED] can tend to reveal, particularly to foreign
24 adversaries with expertise in the area, a [REDACTED] of U.S. intelligence gathering
25 sources and methods.
26

27 78. ~~(TS//S~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]
28

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(U) Summary and Conclusion

79. ~~(TS//SI//NF)~~ The United States has an overwhelming interest in detecting and thwarting further mass casualty attacks by al Qaeda. The United States has already suffered one attack that killed thousands, disrupted the Nation's financial center for days, and successfully struck at the command and control center for the nation's military. Al Qaeda continues to possess the ability and clear, stated intent to carry out a massive attack in the United States that could result in a significant loss of life, as well as have a devastating impact on the U.S. economy. According to the most recent intelligence analysis, attacking the U.S. Homeland remains one of Al Qaeda's top operational priorities, *see* Declaration of John D. Negroponte, DNI, and al Qaeda will keep trying for high-impact attacks as long as its central command structure is functioning and affiliated groups are capable of furthering its interests.

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

[REDACTED] One of the greatest challenges the United States confronts in the ongoing effort to prevent another catastrophic terrorist attack against the homeland is the critical need to follow-up on new leads quickly. Time is of the essence in preventing terrorist attacks, and the government faces significant obstacles in finding and tracking agents of al Qaeda as they manipulate modern technology in an attempt to communicate while remaining undetected. Speed and flexibility are essential in tracking individuals [REDACTED]

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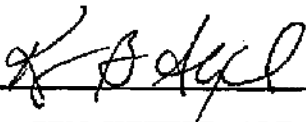
~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON//NOFORN//MR-~~

1 [REDACTED] To follow the
2 trails effectively, and to respond to new leads, it is vital for the U.S. Intelligence Community to
3 be able to quickly and efficiently acquire communications to or from individuals reasonably
4 believed to be a member or agent of al Qaeda and associated terrorist organizations. The NSA
5 activities described herein are vital tools in this effort.

6
7 81. ~~(TS//SI//NF)~~ For the foregoing reasons, in my judgment the disclosure of the
8 information at issue in this lawsuit would cause exceptionally grave damage to the national
9 security of the United States. In addition to upholding the state secrets privilege and statutory
10 privilege assertions by the Director of National Intelligence in this case, I request that the Court
11 also uphold my assertion of NSA's statutory privilege to protect information about NSA
12 activities. Finally, it is my view that continued litigation of this lawsuit, which directly puts at
13 issue highly classified NSA intelligence activities for the detection and targeting of al Qaeda
14 terrorist operations, would risk the disclosure of sensitive classified information and,
15 accordingly, that the Court should not only protect from disclosure the classified information
16 described herein but dismiss this lawsuit.
17

18
19 I declare under penalty of perjury that the foregoing is true and correct.

20
21 DATE: 12 May 06

22 
23 _____
24 LT. GEN. KEITH B. ALEXANDER
25 Director, National Security Agency
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