

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

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE NATIONAL SECURITY AGENCY)
TELECOMMUNICATIONS RECORDS)
LITIGATION)

MDL Dkt. No. 06-1791-VRW

CLASSIFIED DECLARATION
OF J. MICHAEL McCONNELL,
DIRECTOR OF NATIONAL
INTELLIGENCE

This Document Relates to:

Shubert v. Bush, Case No. 07-693

SUBMITTED *IN CAMERA*,
EX PARTE

Hon. Vaughn R. Walker

IN CAMERA, EX PARTE DECLARATION OF J. MICHAEL McCONNELL,
DIRECTOR OF NATIONAL INTELLIGENCE

I, J. Michael McConnell, 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 February 2007. Previously, I have served as the Executive Assistant to the Director of Naval Intelligence, as the Chief of Naval Forces Division at the National Security Agency, as Director of Intelligence for the Joint Chiefs of Staff during Operation Desert Storm, and as the Director of the National Security Agency.

2. ~~(U)~~ In the course of my official duties, I have been advised of this lawsuit and the allegations at issue in Plaintiffs' Amended Complaint. 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 information contained in the Public and *In Camera, Ex Parte* Declarations of Lt. Gen. Keith B. Alexander, Director of the National Security Agency, submitted in this case.

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3. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ As Gen. Alexander states, Plaintiffs wrongly

claim that the NSA has conducted a “dragnet” content surveillance program involving the interception of “virtually every telephone, internet and/or email communication that has been sent from or received within the United States since 2001.” Amended Compl. ¶¶ 1, 4.

Nonetheless, the adjudication of this case risks the disclosure of information concerning several highly classified and critically important intelligence activities of the National Security Agency,

[REDACTED]

(1) targeted content surveillance aimed at [REDACTED] pursuant to the President’s Terrorist Surveillance Program (“TSP”) and recent orders of the Foreign Intelligence Surveillance Court (“FISC” or “FISA Court”); (2) the bulk collection and targeted analysis of non-content information about telephone and Internet communications—critically important and highly sensitive activities that are also now conducted pursuant to FISC orders and that enable the NSA to uncover the contacts [REDACTED]

[REDACTED] (3) other highly significant intelligence activities that are beyond the scope of Plaintiffs’ allegations but nonetheless are put at risk by this case. [REDACTED]

[REDACTED] This lawsuit therefore puts at risk of disclosure information concerning, *inter alia*, essential foreign intelligence-gathering activities 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 recent assessments of the National Counter Terrorism Center (NCTC) prepared in April 2006 and February 2007.)

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1 4. ~~(U)~~ The purpose of this declaration is to formally assert, in my capacity as the
2 Director of National Intelligence and head of the United States Intelligence Community, the
3 military and state secrets privilege (hereafter "state secrets privilege") and a statutory privilege
4 under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence
5 information, sources, and methods that are at risk of disclosure in this case. Disclosure of the
6 information covered by this privilege assertion reasonably could be expected to cause
7 exceptionally grave damage to the national security of the United States and, therefore, the
8 information should be excluded from any use in this case. In addition, I concur with Gen.
9 Alexander's conclusion that, because the very subject matter of this lawsuit concerns highly
10 classified and critically important foreign intelligence activities, the risk is great that further
11 litigation will lead to the disclosure of information harmful to U.S. national security and,
12 accordingly, that this case should be dismissed.

15 ~~(U)~~ CLASSIFICATION OF DECLARATION

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

4 6. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented
5 Information (SCI), which is "subject to special access and handling requirements because it
6 involves or derives from particularly sensitive intelligence sources and methods." 28 C.F.R.
7 § 17.18(a). This declaration references communications intelligence (COMINT), also referred to
8 as special intelligence (SI), which is a subcategory of SCI that identifies information that was
9 derived from exploiting cryptographic systems or other protected sources by applying methods
10 or techniques, or from intercepted foreign communications. This declaration also references
11 human intelligence (HCS), another subcategory of SCI that identifies information derived from
12 individuals who provide intelligence information.

15 7. ~~(TS//SI [REDACTED] TSP//OC/NF)~~ This declaration also contains information
16 about the Terrorist Surveillance Program (TSP), a controlled access signals intelligence program
17 authorized by the President in response to the attacks of September 11, 2001. Information
18 pertaining to this program is denoted with the special marking "TSP." [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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

2 ~~(U)~~ BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE

3 9. ~~(U)~~ The position of Director of National Intelligence was created by Congress in
4 the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
5 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
6 the National Security Act of 1947). Subject to the authority, direction, and control of the
7 President, the Director of National Intelligence serves as the head of the U.S. Intelligence
8 Community and as the principal adviser to the President, the National Security Council, and the
9 Homeland Security Council for intelligence matters related to the national security. *See* 50
10 U.S.C. § 403(b)(1), (2).

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13 10. ~~(U)~~ The United States “Intelligence Community” includes the Office of the
14 Director of National Intelligence; the Central Intelligence Agency; the National Security
15 Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the
16 National Reconnaissance Office; other offices within the Department of Defense for the
17 collection of specialized national intelligence through reconnaissance programs; the intelligence
18 elements of the military services, the Federal Bureau of Investigation, the Department of the
19 Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast
20 Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the
21 Department of Homeland Security concerned with the analysis of intelligence information; and
22 such other elements of any other department or agency as may be designated by the President, or
23 jointly designated by the DNI and heads of the department or agency concerned, as an element of
24 the Intelligence Community. *See* 50 U.S.C. § 401a(4).

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27 11. ~~(U)~~ The responsibilities and authorities of the Director of National Intelligence
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1 are set forth in the National Security Act. *See* 50 U.S.C. § 403-1. These responsibilities include
 2 ensuring that national intelligence is provided to the President, the heads of the departments and
 3 agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military
 4 commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C.
 5 § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the
 6 requirements and priorities for, and managing and directing the tasking, collection, analysis,
 7 production, and dissemination of national intelligence by elements of the Intelligence
 8 Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and
 9 determining, based on proposals submitted by the heads of agencies and departments within the
 10 Intelligence Community, an annual consolidated budget for the National Intelligence Program
 11 for presentation to the President, and for ensuring the effective execution of the annual budget
 12 for intelligence and intelligence-related activities, and for managing and allotting appropriations
 13 for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

16 12. ~~(U)~~ In addition, the National Security Act of 1947, as amended, provides that
 17 “[t]he Director of National Intelligence shall protect intelligence sources and methods from
 18 unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
 19 establishes and implements guidelines for the Intelligence Community for the classification of
 20 information under applicable law, Executive orders, or other Presidential directives and access to
 21 and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
 22 for the establishment of uniform standards and procedures for the grant of access to Sensitive
 23 Compartmented Information (“SCI”) to any officer or employee of any agency or department of
 24 the United States, and for ensuring the consistent implementation of those standards throughout
 25 such departments and agencies. *Id.* § 403-1(j)(1), (2).

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1 13. ~~(U)~~ By virtue of my position as the Director of National Intelligence, and unless
2 otherwise directed by the President, I have access to all intelligence related to the national
3 security that is collected by any department, agency, or other entity of the United States.
4 Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order
5 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the
6 President has authorized me to exercise original TOP SECRET classification authority.
7

8 ~~(U)~~ ASSERTION OF STATE SECRETS PRIVILEGE

9 14. ~~(U)~~ After careful and actual personal consideration of the matter, based upon my
10 own knowledge and information obtained in the course of my official duties, including the
11 information contained in the Public and *In Camera* Declarations of Gen. Alexander, I have
12 determined that the disclosure of certain information—as set forth herein and described in more
13 detail in the classified declaration of Gen. Alexander—would cause exceptionally grave damage
14 to the national security of the United States and, therefore, must be protected from disclosure and
15 excluded from this case. Thus, as to this information, I formally assert the state secrets privilege.
16 In addition, it is my judgment that sensitive state secrets are so central to the subject matter of the
17 litigation that any attempt to proceed in the case will substantially risk the disclosure of the
18 privileged information described herein and in more detail in the classified declaration of Gen.
19 Alexander and will therefore risk exceptionally grave damage to the national security of the
20 United States.
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23 ~~(U)~~ ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT

24 25. ~~(U)~~ Through this declaration, I also hereby invoke and assert a statutory privilege
26 held by the Director of National Intelligence under the National Security Act to protect the
27 information described herein, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory
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1 privilege for intelligence sources and methods is coextensive with my state secrets privilege
2 assertion.

3 ~~(U)~~ INFORMATION SUBJECT TO CLAIM OF PRIVILEGE

4 16. ~~(U)~~ The information subject to my assertion of the state secrets and statutory
5 privileges includes the following:

- 6 A. ~~(U)~~ Information regarding the specific nature of the al
7 Qaeda terrorist threat; and
- 8 B. ~~(U)~~ Information that may tend to confirm or deny whether
9 the Plaintiffs have been subject to any alleged NSA
10 intelligence activity that may be at issue in this matter; and
- 11 C. ~~(U)~~ Information concerning NSA intelligence, activities,
12 sources, or methods, including:
 - 13 (1) ~~(U)~~ Information concerning the scope and operation of
14 the Terrorist Surveillance Program, including information
15 that may be needed to demonstrate that the TSP was limited
16 to one-end foreign al Qaeda-related communications and
17 that the NSA does not otherwise engage in the content
18 surveillance dragnet that the Plaintiffs allege; and
 - 19 (2) ~~(U)~~ Any other information concerning NSA intelligence
20 activities, sources, or methods that would be necessary to
21 adjudicate the Plaintiffs' claims, including, to the extent
22 applicable, information that would tend to confirm or deny
23 whether the NSA collects large quantities of
24 communication records information; and
- 25 D. ~~(U)~~ Information that may tend to confirm or deny whether
26 Verizon/MCI, AT&T, or any other telecommunications
27 carrier has assisted the NSA with the alleged intelligence
28 activities.

24 ~~(U)~~ DESCRIPTION OF INFORMATION AND HARM OF DISCLOSURE

25 A. ~~(U)~~ Information Concerning the al Qaeda Terrorist Threat

26 17. ~~(S//OC/NF)~~ Based on all of the intelligence information presently available to us,
27 the U.S. Intelligence Community judges the al Qaeda terrorist network has the intention and the
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1 potential capability to carry out catastrophic terrorist acts on the U.S. Homeland. Indeed,
 2 intelligence indicates al Qaeda's central leadership is pursuing multiple, possibly related, paths to
 3 an attack against the Homeland. International counterterrorism efforts in 2006—especially the
 4 August disruption of a major aviation plot by United Kingdom (UK) and Pakistani authorities—
 5 have been successful, but they underscore that al Qaeda's core elements are resilient and
 6 continue to plot attacks against U.S. interests overseas. Preventing such attacks is the U.S.
 7 Intelligence Community's highest priority. The intelligence activities that are implicated by, and
 8 put at risk of, disclosure in this lawsuit must be understood in the context of the extremely
 9 serious threat faced by the United States.

11 18. ~~(S)~~ With the attacks of September 11, al Qaeda demonstrated its ability to
 12 introduce agents into the United States undetected and to perpetrate devastating attacks. As the
 13 President noted in his January 23, 2007, State of the Union Address, "In the mind of the
 14 terrorists, this war began well before September the 11th, and will not end until their radical
 15 vision is fulfilled. And these past five years have given us a much clearer view of the nature of
 16 this enemy. . . . Our enemies are quite explicit about their intentions. They want to overthrow
 17 moderate governments, and establish safe havens from which to plan and carry out new attacks
 18 on our country."

21 19. ~~(S//HCS//OC/NF)~~ Since September 11, al Qaeda leaders have repeatedly
 22 promised to deliver another, even more devastating attack on America. For example, in October
 23 2002, al Qaeda leader Ayman al-Zawahiri stated in a video addressing the "citizens of the United
 24 States": "I promise you that the Islamic youth are preparing for you what will fill your hearts
 25 with horror." In an October 2004 tape, al-Zawahiri chastised the Muslim world—"Limiting the
 26 battle to fighting only the Jews in Palestine and leaving America without attacking it, will not
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1 restrain America and the crusaders against us." In an audiotape released on January 19, 2006,
 2 Bin Ladin warned United States citizens that "operations in America" are "under preparation and
 3 you will see them on your very own soil as soon as they are completed, Allah willing." And
 4 again, in June 2006 Bin Ladin claimed, "We will continue to fight you and your allies
 5 everywhere, in Iraq, Afghanistan, Somalia and Sudan to run down your resources and kill your
 6 men until you return defeated to your nation."

8 20. ~~(U)~~ In recent months, al Qaeda has reiterated its intent to inflict a catastrophic
 9 terrorist attack on the United States. As recently as December 20, 2006, al-Zawahiri issued
 10 threats of attacking the U.S. Homeland saying, "You shall never dream of security until we truly
 11 experience it in Palestine and all lands of Islam . . . if we are struck in our countries, we shall
 12 never stop striking you in your countries . . . and as our commander, Shaykh Usama Bin Ladin . .
 13 . told you, 'As you bomb, you will be bombed, and as you kill, you will be killed.'"

15 21. ~~(S//NF)~~ Since the September 11 attacks, al Qaeda has staged several large-scale
 16 attacks around the world, including in Indonesia, London, Iraq, Saudi Arabia, Algeria, and
 17 Turkey, killing hundreds of innocent people. Foiled plots, including the plot disrupted in August
 18 2006 to blow up multiple airliners transiting the Atlantic Ocean en route to North American
 19 cities, would have claimed thousands more innocent victims had they been successful.

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

22 22. ~~(S//HCS//OC/NF)~~ Classified intelligence information provides a more specific
 23 and alarming picture of the continuing terrorist threat to the Homeland posed by al Qaeda. In
 24 sum, the U.S. Intelligence Community believes the al Qaeda terrorist network intends to execute
 25 a catastrophic terrorist attack on the U.S. Homeland. For this reason, the President authorized
 26 the Terrorist Surveillance Program and related activities described in this Declaration. The
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1 intelligence activities at issue in this case are thus being utilized to meet a known, real, and
2 perhaps imminent threat to the lives of thousands of Americans and, indeed, to the continuity of
3 the United States Government. The threat we face cannot be understated.

4 23. ~~(TS//HCS//OC/NF)~~ British and Pakistani authorities in early August 2006
5 disrupted the most significant known, advancing threat to the U.S. Homeland and U.S. interests
6 abroad since September 11, 2001. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 24. ~~(S//HCS//OC/NF)~~ In addition, based on April 2006 and February 2007
14 assessments by the National Counterterrorism Center (NCTC), a national intelligence center that
15 is an element of the ODNI, the U.S. Intelligence Community continues to receive reliable
16 intelligence [REDACTED] that al Qaeda remains intent
17 on conducting a grand-scale attack on the Homeland with a likely focus on U.S. symbols of
18 power or economic might. Al Qaeda continues to have these intentions despite the degradation
19 of its leadership, resources, and operational capability in the wake of a steady stream of deaths,
20 captures, and disruptions. Intelligence sources have [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 As a result of our disruptions of the group's planning and increased security measures, however,
25 "softer" targets have become increasingly attractive, although the 2006 US-UK aviation plot
26 discussed above shows the group does not shrink from attempting targets with enhanced security.
27 Specific softer targets include tourist sites, shopping centers, and passenger trains. [REDACTED]

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[REDACTED]

25. ~~(S//HCS//NF)~~ We have numerous reasons to believe al Qaeda is still plotting another attack on U.S. soil. Besides Bin Ladin's own statements, his deputy, Ayman al-Zawahiri, issued threats against the United States and its interests and enjoined Muslims worldwide to take up violent jihad in more than a dozen audio or video taped statements in 2006 and at least four thus far in 2007.

26. ~~(S//HCS//OC/NF)~~ [REDACTED]

[REDACTED]

27. ~~(S//HCS//OC)~~ The Intelligence Community assesses al Qaeda is most likely employing a diversified operational planning model, involving multiple, probably autonomous, concurrent efforts. This is possibly in response to successful U.S. targeting of known al Qaeda senior leaders. [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 28. ~~(S//HCS//OC/NF)~~ Al Qaeda has regained many of its capabilities despite the loss
6 of its Afghan base and a more difficult global operating environment created by sustained U.S.
7 and international counterterrorism efforts. [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 • Bin Laden and Zawahiri still make major policy decisions and dispense guidance.

23 The degree of their involvement in daily matters is unknown, [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 [REDACTED]
28 [REDACTED]

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[REDACTED]

29. ~~(S//HCS//OC/NF)~~ Our intelligence also indicates that al Qaeda is interested in using Mexico as a point of entry into the United States. [REDACTED]

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

(S//NF) Possible al Qaeda Targets and Attacks

30. ~~(TS// [REDACTED] OC/NF)~~ Although any attack on the Homeland would be viewed by al Qaeda as a success, [REDACTED]

[REDACTED]

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1 31. ~~(S//HCS//OC/NF)~~ With respect to attacks in the Homeland, the compilation of
2 data on al Qaeda's plotting attempts suggests the group remains focused on its strategic targeting
3 doctrine—striking major U.S. cities or industries, causing major psychological and economic
4 impact. The group's signature attack is one that would be impressive in its scope or audacity and
5 hits either multiple targets simultaneously or a single high profile place or person. Reporting
6 [REDACTED]
7 [REDACTED] has identified a variety of potential targets that would be
8 attractive to group operatives, such as:

- 9 • [REDACTED]
10 [REDACTED]
11 • [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 • [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 32. ~~(TS//HCS//OC/NF)~~ Although intelligence regarding specific targets or
18 locations is often incomplete, known target locations include large cities [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 33. ~~(S//HCS//OC/NF)~~ Although not eliminating al Qaeda's plotting to conduct a
25 spectacular attack against the U.S., constraints on al Qaeda's capabilities and increased security
26 measures at airports, government buildings, and other high-profile targets in the United States
27 could be making lower profile, less-protected targets increasingly attractive. An attack in the
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1 United States, like those against London's transport systems, would probably meet al Qaeda's
2 objectives without requiring the planning, resources, and expertise necessary for a complex
3 September 11-style attack. This shift in al Qaeda's planning has become apparent from our
4 current intelligence. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 34. ~~(S//HCS//OC/NF)~~ [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]
19 35. ~~(S//HCS//OC/NF)~~ [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED]
25 [REDACTED]

26 36. ~~(S//HCS//OC/NF)~~ The U.S. Intelligence Community remains concerned the
27 multiple terrorist attacks carried out in London in July 2005 and the foiled 2006 US-UK airline
28

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

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

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plot may be a harbinger of similar attacks to come in the United States in which Islamic extremists in Western countries—whether homegrown or sent from abroad—will mimic and refine the small explosives tactics used in these operations. Of specific concern to the U.S. Intelligence Community in the wake of the London bombings is the continuing interest al Qaeda and its affiliates have expressed in attacking [REDACTED]. Our intelligence suggests any attack against [REDACTED] most likely would occur in major cities or against [REDACTED] serving major cities, which would be consistent with al Qaeda's expressed intent to inflict a high number of casualties in key centers of the economy. [REDACTED]

[REDACTED]

37. ~~(S//HCS//OC/NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

While U.S. authorities have identified instances of possible surveillance and pre-operational

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

1 activities aimed at gathering intelligence on rail transit systems, as yet there is no corroborating
2 intelligence to link them to operational planning against U.S. mass transit systems.

3 38. ~~(S//HCS//OC/NF)~~ The U.S. Intelligence Community also believes al Qaeda and
4 its affiliates continue to target the civil aviation sector, including U.S. passengers and Western
5 aircraft overseas. [REDACTED]

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

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 ~~(S//NF)~~ Unconventional Weapons

21 40. ~~(TS//HCS//OC/NF)~~ The threat posed by al Qaeda extends beyond the realm of
22 conventional weapons. We are confident al Qaeda was actively pursuing chemical, biological,
23 and radiological capabilities prior to the fall of the Taliban in late 2001 and has been actively
24 pursuing a nuclear capability since at least 2005. Based on the extent of senior leadership
25 support for the Chemical, Biological, Radiological and Nuclear (CBRN) efforts, a clearly stated
26 intent, and reporting since 2001, we judge al Qaeda remains determined to inflict mass casualties
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON//NOFORN//MR~~

1 against Homeland targets with CBRN. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 41. ~~(S//NF)~~ [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Although al Qaeda has long desired a nuclear capability, to date we assess it is
10 unlikely al Qaeda has acquired sufficient materials and expertise to do so.

11 43. ~~(S//NF)~~ Among al Qaeda and associated jihadist networks, information is
12 proliferating on how [REDACTED]

13 [REDACTED]

14 This
15 continued interest and pursuit of unconventional weapons increases the likelihood al Qaeda or an

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

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

1 associated group will attempt to conduct CBRN attacks against the United States or U.S.
 2 interests worldwide.

3 44. ~~(TS// [REDACTED] OC/NF)~~ These various examples of some of our intelligence information
 4 demonstrate the al Qaeda network continues to plan ways to inflict a catastrophic attack. In sum,
 5 based on all of the intelligence presently available to us, the U.S. Intelligence Community judges
 6 al Qaeda poses a grave danger to the U.S. Homeland. The severity of that threat and the
 7 difficulty of tracking al Qaeda members is precisely the reason the Government is utilizing all
 8 lawful intelligence-gathering capabilities. I set forth this threat information not only to provide
 9 the Court with crucial background as to why the intelligence activities at issue in this case are
 10 being undertaken, but also to assert a claim of privilege over this threat information. Although
 11 the foregoing threat assessment demonstrates precisely why we undertake these activities, the
 12 Government cannot disclose this information in defending the legality of the intelligence
 13 activities being challenged, since to do so obviously would disclose to our adversaries what we
 14 know of their plans and how we may be obtaining information about them. Such disclosure
 15 would lead our adversaries not only to alter their plans, but also to implement greater security for
 16 their communications, thereby increasing the risk of non-detection. In addition, disclosure of
 17 threat information might reveal human sources for the United States and, thus, compromise those
 18 sources and put lives at danger. Accordingly, although I believe such threat information is
 19 crucial to understanding the context in which NSA conducts the intelligence activities put at
 20 issue by Plaintiffs' lawsuit, I must assert the state secrets privilege and DNI statutory privilege
 21 over the information because of the grave damage to national security that could reasonably be
 22 expected to result from its disclosure.
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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~

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

1 B. ~~(U)~~ Information That May Tend to Confirm or Deny Whether the Plaintiffs
2 Have Been Subject to any Alleged NSA Intelligence Activities

3 45. ~~(U)~~ In addition to asserting privilege over information concerning the al Qaeda
4 threat, I am also asserting the state secrets privilege and the DNI statutory privilege to protect
5 from disclosure information that would reveal or tend to reveal whether or not the Plaintiffs in
6 this case have been subject to any NSA intelligence activities. See *In Camera* Alexander Decl.
7 ¶¶ 32-37.

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

9
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 As should be obvious, to confirm or deny whether someone is a target of surveillance would
16 disclose either who is being targeted—thus compromising that collection—or who is not being
17 targeted, thus revealing to adversaries that an individual is a secure source for communicating or,
18 more broadly, the methods being used to conduct surveillance. While it may seem innocuous to
19 disclose that certain citizens are not being targeted, such a disclosure may provide insight to a
20 trained eye as to the scope of the NSA's activities. Moreover, providing assurances that
21 someone is not being targeted becomes unworkable, and itself revealing, when cases arise where
22 an individual may be targeted, because refusing to confirm or deny only in cases where
23 surveillance is occurring would effectively disclose and compromise that surveillance. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 The only recourse for the NSA is to neither confirm nor deny whether someone has

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

1 been targeted or subject to NSA activities, regardless of whether the individual has been targeted
2 or not. To say otherwise when challenged in litigation would result in the frequent, routine
3 exposure of NSA information, sources, and methods and would severely undermine surveillance
4 activities in general.

5 C. ~~(U)~~ Information Concerning NSA Activities, Sources, or Methods

6 47. ~~(TS//SI//TSP//OC/NF)~~ I am also asserting privilege to protect information
7 concerning the classified NSA intelligence activities, sources, and methods that are further
8 described in Gen. Alexander's classified declaration. In particular, as set forth in Gen.
9 Alexander's Declaration, the United States faced urgent and immediate intelligence challenges
10 after the September 11 attacks, and the President authorized signals intelligence activities
11 designed to meet those challenges and to detect and prevent future terrorist attacks by al Qaeda
12 and its affiliates. Those activities include the Terrorist Surveillance Program ("TSP") and related
13 content surveillance now subject to orders of the Foreign Intelligence Surveillance Court, as well
14 as the bulk collection of telephony and Internet non-content meta data currently authorized by
15 the FISC and used to discover contacts [REDACTED]
16 [REDACTED]
17 [REDACTED]

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20 48. ~~(U)~~ My privilege assertion covers any facts concerning NSA intelligence sources
21 and methods that are put at risk of disclosure by this case, including (1) information concerning
22 the scope and operation of the Terrorist Surveillance Program, including information that may be
23 needed to demonstrate that the TSP was limited as the President stated to the interception of one-
24 end foreign communications reasonably believed to involve a member or agent of al Qaeda or an
25 affiliated terrorist organization, and that the NSA does not otherwise intercept the content of
26 virtually every telephone and Internet communication sent from or received within the United
27 States.

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

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

1 States as the Plaintiffs allege; and (2) any other information concerning NSA intelligence
2 activities, sources, or methods that would be necessary to adjudicate the Plaintiffs' claims,
3 including, to the extent applicable, information that would tend to confirm or deny whether the
4 NSA collects large quantities of communication records information. In my judgment, the
5 disclosure of such information would cause exceptionally grave harm to national security.

6
7 49. ~~(TS//SI//TSP//OC/NF)~~ Specifically, based on my personal consideration and
8 judgment as to the harm disclosure would cause to national security, my privilege assertion
9 includes, but is not limited to, the following activities discussed by Gen. Alexander:

10 (1) ~~(TS//SI//TSP//OC/NF)~~ First, I assert privilege over facts concerning the operation of
11 the Terrorist Surveillance Program and any other NSA intelligence activities needed to
12 demonstrate that the TSP was limited as the President stated to the interception of one-end
13 foreign communications reasonably believed to involve a member or agent of al Qaeda or an
14 affiliated terrorist organization, and that the NSA does not otherwise conduct a dragnet of
15 content surveillance as the Plaintiffs allege. Such facts include those concerning (1) how targets
16 were selected under the TSP; (2) how specific methods were used under the TSP to intercept
17 telephone and Internet communications and to minimize the risk of collecting non-target
18 communications and purely domestic communications; (3) the nature and identity of the targets
19 under the TSP, [REDACTED] and (4) other NSA surveillance activities that
20 occur outside the United States or are otherwise outside the scope of FISA, [REDACTED]

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24 [REDACTED] In my judgment, the
25 NSA should not be forced to confirm or reveal its actual intelligence sources and methods in
26 order to show that it is not conducting the "dragnet" of surveillance that Plaintiffs allege.
27 Revealing such information would cause exceptionally grave harm to the national security by
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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~

1 helping foreign adversaries to evade detection.

2 (2) ~~(TS//SI//TSP//OC/NF)~~ Second, I assert privilege over additional classified details
3 about the operation of the TSP that would be necessary to adjudicate the lawfulness of that
4 program (to the extent it is at issue), including facts concerning (1) the operational swiftness and
5 agility of the TSP, particularly in conjunction with meta data analysis, [REDACTED]

6 [REDACTED] and (2) the effectiveness and success of the
7 TSP. In my judgment, revealing any of this information, even now that the TSP is no longer
8 authorized, would disclose highly classified NSA capabilities, sources, and methods, including
9 those now being utilized under the current FISC orders.
10

11 (3) ~~(TS//SI//TSP//OC/NF)~~ Third, I also assert privilege over facts that would disclose or
12 describe the NSA's meta data collection activities. In my judgment, the NSA is unable to
13 disclose any information about the existence or operation of the NSA's bulk collection or
14 targeted analysis of Internet or telephony meta data without causing exceptionally grave harm to
15 national security. These are among the most important intelligence tools the NSA uses, and they
16 have never been officially confirmed or denied by the United States. Disclosing or confirming
17 these activities would seriously undermine an essential tool for tracking possible terrorist plots
18 and would help foreign adversaries evade detection. Such a disclosure would also undermine
19 ongoing intelligence operations authorized by the FISC, as the meta data activities are currently
20 conducted pursuant to FISC orders.
21

22 (4) ~~(TS//SI//TSP//OC/NF)~~ Finally, I also assert privilege over information concerning
23 the various FISC orders that are described by Gen. Alexander. In my judgment, disclosure of
24 current surveillance activities of the FISC, either directly or indirectly, would seriously
25 compromise, if not destroy, vital ongoing intelligence operations.
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~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~

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

1 50. ~~(TS//SI//TSP//OC/NE)~~ Based on my experience, I believe that the NSA activities
2 discussed herein and described further by Gen. Alexander—the content and meta data collection
3 activities authorized by the President after 9/11 and subsequently authorized by the FISC—are
4 among the most important intelligence tools available to the United States for protecting the
5 Homeland from another catastrophic terrorist attack. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Disclosing the information

10 described herein and by Gen. Alexander would compromise these critical activities, sources, and
11 methods, thereby helping our adversaries evade detection and causing exceptionally grave
12 damage to the national security of the United States.

13
14 **D. (U) Information That May Tend to Confirm or Deny Whether Verizon/MCI,**
15 **AT&T, or any Other Telecommunications Carrier Has Assisted the NSA**
16 **With Alleged Intelligence Activities**

17 51. ~~(TS//SI// [REDACTED] /TSP//OC/NE)~~ Finally, I assert privilege over any
18 information that would tend to confirm or deny whether Verizon/MCI, AT&T, or any other
19 telecommunications carrier has assisted the NSA with intelligence activities. [REDACTED]

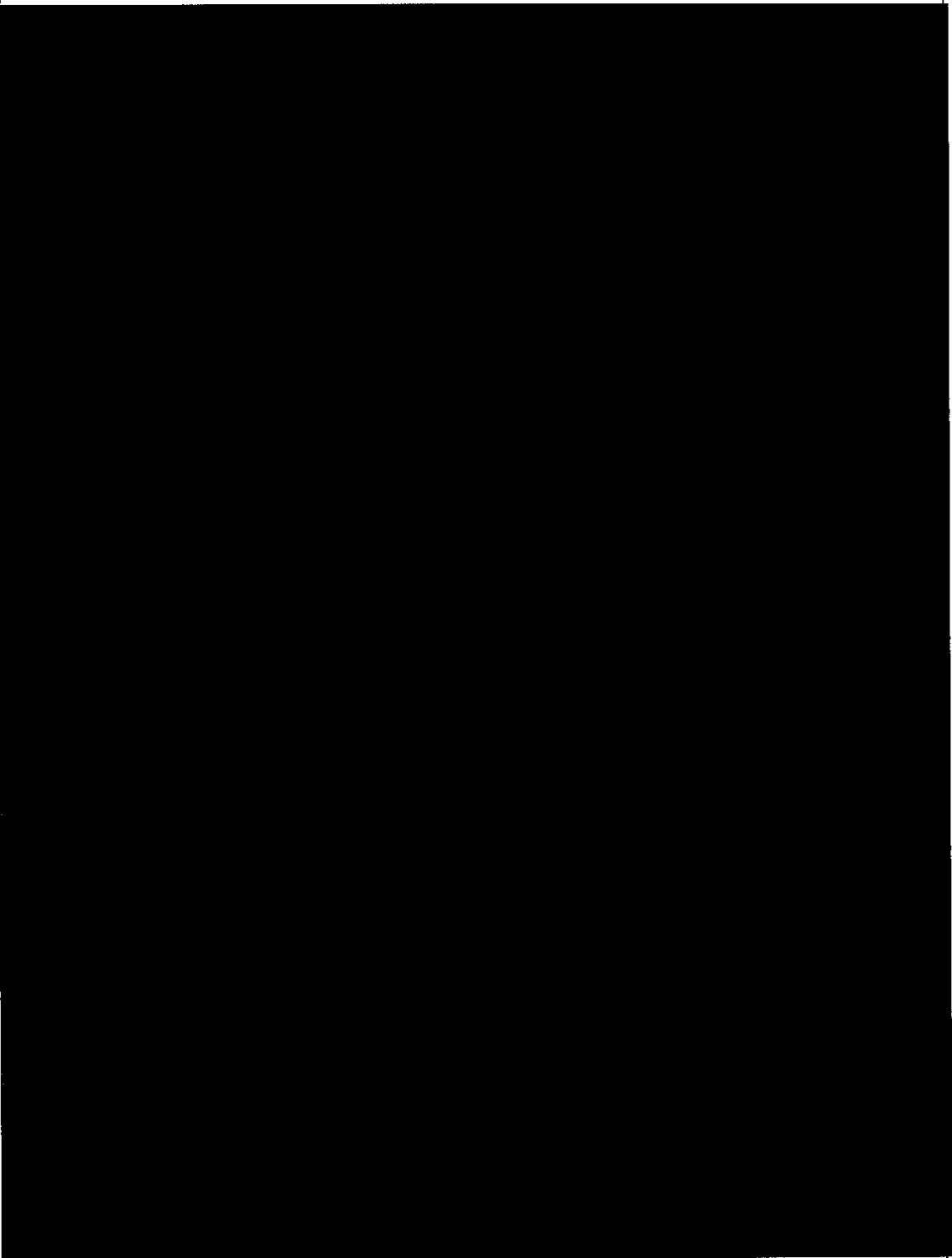
20 [REDACTED]
21 [REDACTED]
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23 [REDACTED]
24 [REDACTED]
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28 [REDACTED]

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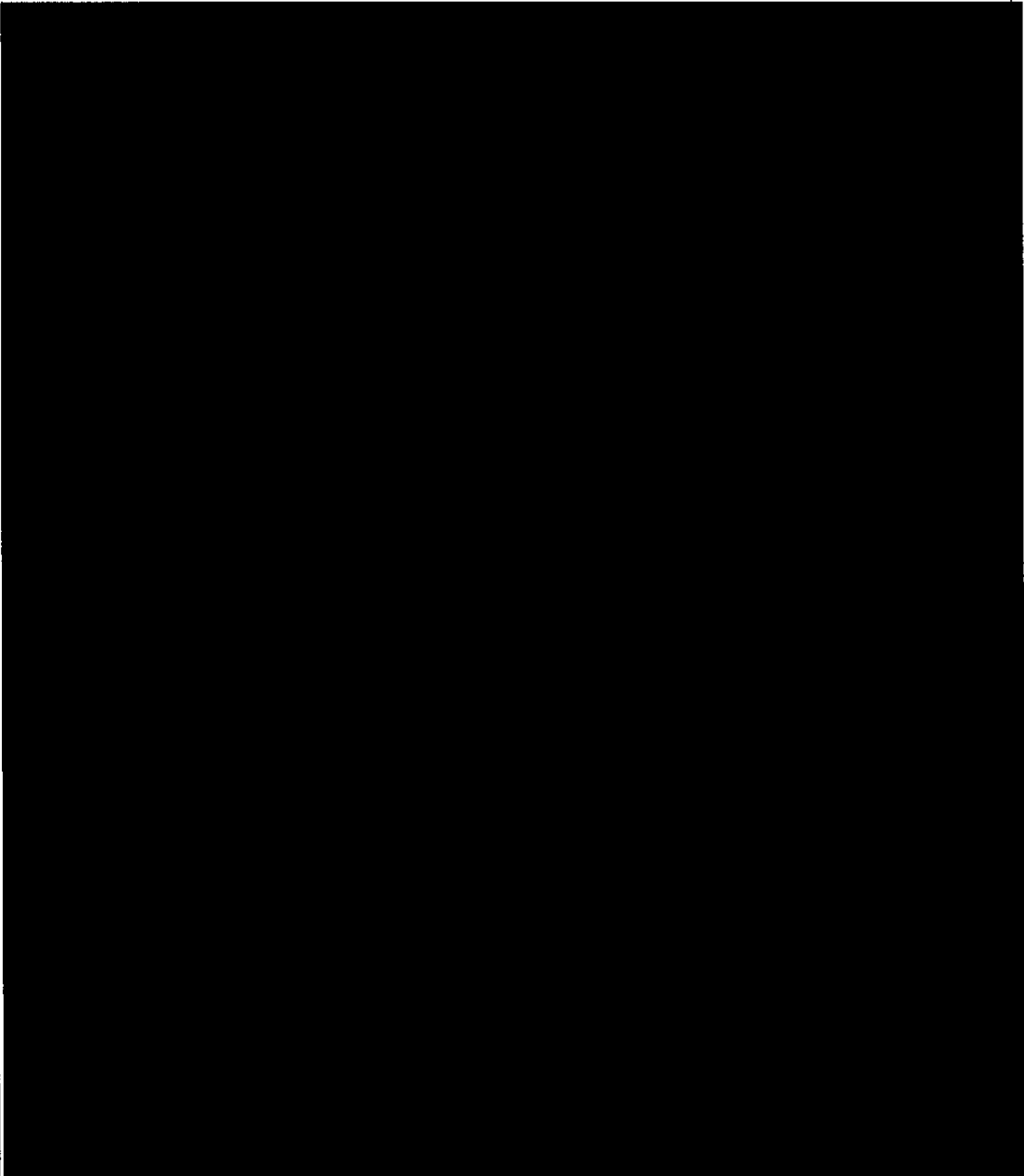


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~~TOP SECRET//COMINT [REDACTED] /TSP//HCS//ORCON/NOFORN//MR~~

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Accordingly, I assert the state secrets and DNI statutory privilege over such information, including the information described in the *In Camera* Declaration of Gen. Alexander.

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(U) RISK OF LITIGATION AND CONCLUSION

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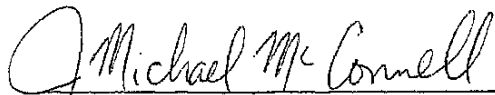
56. ~~(TS//SI//OC/NF)~~ Finally, I concur with Gen. Alexander's conclusion that further litigation of this case will inherently risk the disclosure of highly classified activities. Plaintiffs wrongly allege that the NSA is conducting a dragnet program of content surveillance, but disproving Plaintiffs' speculation would require revealing and probing the intelligence activities that the NSA actually does conduct. Those vital activities, as described herein, are highly classified, sensitive, and fragile, and any effort to disclose information about them could have grave consequences for the national security.

57. ~~(TS//SI//OC/NF)~~ The stakes we face in the U.S. Intelligence Community are of the highest magnitude. We know that 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, or an attack on government or economic sector infrastructure that would cause severe economic harm or threaten the continuity of government. The NSA's activities described herein and by Gen. Alexander are all directed at this terrible threat.

58. ~~(TS//NF)~~ For these reasons, in addition to invoking the state secrets and DNI statutory privilege to protect the intelligence information, sources, and methods at issue, I respectfully urge the Court to dismiss this case.

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

DATE: 24 MAR 07



J. MICHAEL McCONNELL
Director of National Intelligence

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