[redacted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN JEWEL, ET AL.,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, ET AL.,

Defendants.

No. C 08-04373 JSW

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VIRGINIA SHUBERT, ET AL.,

Plaintiffs,

v.

BARACK OBAMA, ET AL.,

Defendants.

No. C 07-00693 JSW

ORDER

[redacted]

On June 12, 2014, the Court received an *ex parte, in camera* request from the Government Defendants lodged through the Classified Information Security Officer requesting an advance copy of the transcript of the hearing held on Friday, June 6, 2014. According to the request, the National Security Agency indicated that Government counsel, Anthony J. Coppolino, may have inadvertently made a statement during the hearing that the NSA contends is classified.

The Court determined that the request itself does not disclose any classified material but merely involves the process by which potentially classified information should be maintained, and issued an order under seal which alerted Plaintiffs to the Government's request and required a response in writing.

Having received Plaintiffs' response, the Court issued an order requiring that the Government Defendants file a reply, also under seal, to address their burden to request the redaction, a proposed procedure for the Court to make a determination regarding whether and how the specific portions of the transcript should be redacted, and a response to Plaintiffs' motion to unseal all of the filings regarding Defendants' redaction request.

Having now received all of the parties' briefing, the Court makes the following rulings:

(1) the transcript from the June 6, 2014 hearing shall be made available to the Court and to the Government Defendants;

(2) by no later than July 28, 2014, the Government Defendants shall file a response under seal indicating that there was no inadvertent disclosure of classified information during the hearing or shall file an *in camera, ex parte* filing to the Court presenting the information that they contend was classified and inadvertently disclosed, supported by declarations indicating that the information disclosed had been previously classified and is currently classified.

Pursuant to the procedure in *Al-Haramain Islamic Foundation v. Bush*, 507 F.3d 1190, 1193 (9th Cir. 2007), the Court is obligated to perform an *in camera* review of the transcript to determine whether there has been an inadvertent disclosure of classified information. Further, the Court is obligated to countenance against the reconstruction of the classified information by the public. Accordingly, the Court DENIES without prejudice the Plaintiffs' request to unseal the filings regarding the Government Defendants' transcript request. The Court shall reconsider the decision to unseal this proceeding should the Government Defendants evaluate the transcript and determine that no classified information was inadvertently disclosed or the Court concludes that the transcript does not contain classified information.

However, should the Government Defendants meet their significant burden to demonstrate that information should be redacted from the transcript, the Court shall order that the final transcript available to the public reflect where the redaction occurred in order that the public record accurately reflect the actual hearing and the Court's determination that classified information remained classified despite the inadvertent disclosure.

IT IS SO ORDERED.

Dated: July 11, 2014

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

CAROLYN JEWEL et al,

Plaintiff,

v.

NATIONAL SECURITY AGENCY et al,

Defendant.
/

Case Number: CV08-04373 JSW

VIRGINIA SHUBERT et al,

Plaintiff,

v.

GEORGE W BUSH et al,

Defendant.
/

Case Number: CV07-00693 JSW

CERTIFICATE OF SERVICE

[redacted]

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 11, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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United States District Court
For the Northern District of California

Dated: July 11, 2014

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk