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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CAROLYN JEWEL, *et al.*,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

VIRGINIA SHUBERT, *et al.*,

Plaintiffs,

v.

BARACK OBAMA, *et al.*,

Defendants.

Case No. 4:08-cv-04373-JSW
Case No. 4:07-cv-00693-JSW

GOVERNMENT DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR REQUEST FOR CLASSIFICATION REVIEW OF JUNE 6, 2014 TRANSCRIPT

No hearing scheduled
Oakland Courthouse
Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

FILED UNDER SEAL

INTRODUCTION

In their June 12, 2014 letter, the Government Defendants notified the Court that Government counsel may have inadvertently made a statement during the emergency hearing held on June 6, 2014, that revealed classified information. In that letter, the Government sought an advance copy of the transcript to determine if there had been such a disclosure. On June 13, 2014, the Court ordered Plaintiffs to respond under seal to the Government's letter, *see* June 13, 2014 Order, and, after Plaintiffs responded, the Court ordered the Government to submit a reply to Plaintiffs' response that addresses:

> (1) whether [the Government Defendants] can meet their substantial burden to request the redaction; (2) a proposed procedure for the Court to make a determination regarding whether and how the specific portions of the transcript should be redacted; and (3) a response to Plaintiffs' motion to unseal all of the filings regarding Defendants' redaction request.

Order, June 23, 2014 at 2. The Government Defendants respectfully submit this reply pursuant to the Court's June 23, 2014 Order.

At the outset, it is important to emphasize the limited nature of the Government's request. Plaintiffs misstate the Government's request by claiming that the Government sought the "extraordinary relief" of "the opportunity to secretly 'revise the transcript.'" Pls.' Resp. to Ct.'s Order re Defs.' *Ex Parte, In Camera* Req. and Administrative Mot. to Unseal at 1 (June 23, 2014) ("Pls.' Resp."). The Government did nothing of the sort. Rather, in furtherance of its obligation to protect national security information, the Government merely notified the Court of the potential inadvertent disclosure of classified information during the hearing and requested an advance copy of the transcript to be used to determine whether the transcript in fact contains such information. The request contemplated that if the Government determines that the transcript contains classified information that needs to be redacted to protect national security, the Government would then return to the Court and request an opportunity to remove it from the transcript. June 12, 2014 Letter at 1.

Plaintiffs' arguments regarding the First Amendment and due process disregard the fact that the matter now before the Court concerns inadvertently disclosed information that may be classified. If the Government, upon review of the transcript, determines that it contains information that is properly classified, that alone would be sufficient to require redaction of that information from the publicly released version of the transcript, because the law is clear that there is no First Amendment (or due process) right of access to classified information. None of the cases cited by Plaintiffs addresses classified information, much less classified information that was inadvertently disclosed. The Court of Appeals has, however, provided guidance regarding circumstances analogous to those before the Court. In *Al-Haramain Islamic Found., Inc. v. Bush*, 507 F.3d 1190 (9th Cir. 2007), the Court of Appeals affirmed that a classified document that had been inadvertently disclosed to plaintiffs' counsel—and also reviewed by a member of the press—remained classified despite the inadvertent disclosure.

Consistent with *Al-Haramain*, the Court should adopt the procedure proposed by the Government for resolving this issue. The Government proposes that it review an advance copy of the transcript of the June 6 hearing to determine whether it contains any inadvertently disclosed classified information that must be removed to protect national security. Of course, if there is no such classified information in the transcript, then it can be produced to Plaintiffs and the public in the normal course. If, however, the Government's review of the transcript reveals that it contains classified information that requires removal to protect national security, the Government will provide *ex parte*, *in camera* the proposed redaction to the Court with an explanation of the harms to national security if that information were to remain part of the publicly revealed transcript.

Finally, the Government respectfully requests that any filings related to its June 12, 2014 request to review the transcript remain under seal in order to prevent potentially harmful public speculation about what information in the transcript may be classified.

ARGUMENT

I. NEITHER PLAINTIFFS NOR THE PUBLIC HAS A RIGHT TO KNOW ANY CLASSIFIED INFORMATION THAT MAY HAVE BEEN INADVERTENTLY DISCLOSED DURING THE JUNE 6 HEARING.

The Court first directed the Government to address whether it can meet its burden of demonstrating that classified information, if any, should be redacted from the transcript. As discussed herein, all that the Government must do is make a showing that the information it seeks to remove is properly classified. The "heavy burden" of justification to which Plaintiffs allude applies only to judicial records to which the public has traditionally enjoyed access. There is no such tradition of public access to classified information, and the precedent is accordingly uniform and longstanding that the public enjoys no constitutional right of access to classified information contained in judicial records.

A. The Executive Branch Is Responsible for the Protection of Classified Information.

Well-established precedent requires that the Court defer to the Executive regarding the protection of classified information. As a threshold matter, under the separation of powers established by the Constitution, the Executive Branch is responsible for the protection and control of national security information. *See Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988) (noting that the Executive's authority to classify information arises from the President's role as Commander in Chief under Art. II, § 2 of the Constitution). Because the Executive has the constitutional responsibility to protect classified information, decisions concerning access to and control, use, and dissemination of such information rest exclusively within the discretion of the Executive. *Id.* at 527, 529 (holding that authority to determine who may have access to classified information is "committed by law to the appropriate agency of the Executive branch").

The deference that courts show to the Executive regarding access to classified information is rooted not only in the constitutional role of the President, but also rests on "practical" concerns: "the Executive and the intelligence agencies under his control occupy a superior position to that of the courts in evaluating the consequences of a release of sensitive information." *El-Masri v. United States*, 479 F.3d 296, 305 (4th Cir. 2007). As *Egan* instructed,

"[f]or 'reasons . . . too obvious to call for enlarged discussion,' the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it." 484 U.S. at 529 (quoting *CIA v. Sims*, 471 U.S. 159, 170 (1985)).

Here, the agency that holds and is responsible for protecting the information at issue, the National Security Agency ("NSA"), has requested the opportunity to review the transcript of the June 6 hearing to determine whether it in fact contains inadvertently disclosed classified information that must be removed from the public record to protect national security. Allowing the NSA to conduct this review is consistent with the deference courts traditionally give the Executive regarding the protection of classified information.

B. There Is No First Amendment Right of Access to Inadvertently Disclosed Classified Information.

Plaintiffs argue that the Government, in order to justify redacting any classified information there may be in the transcript, must meet a "very heavy burden" to overcome the First Amendment right of access to judicial records. Pls.' Resp. at 5. Plaintiffs overlook, however, that there is no First Amendment right of access to classified information; hence, the "heavy burden" of justifying the withholding of information contained in a judicial record is not triggered here. It is enough to justify redaction of information that it has been properly classified—*i.e.*, that responsible Government officials have determined that its release would be harmful to national security.

The law is clear that there is no First Amendment right of access to judicial records that have not traditionally been available to the public. The Government recognizes that under the First Amendment, the press and the public have a "presumed right of access to court proceedings and documents." *United States v. Guerrero*, 693 F.3d 990, 1000 (9th Cir. 2012) (quoting *Oregonian Publ'g Co. v. U.S. Dist. Court for Dist. of Oregon*, 920 F.2d 1462, 1465 (9th Cir. 1990)). In this case, however, any "right of access" now claimed by Plaintiffs cannot be sustained where access to any inadvertently disclosed classified information is at issue.

"The Supreme Court has established a two-part test for determining whether a first amendment right of access extends to a particular kind of hearing" or document. *Oregonian Publ'g Co.*, 920 F.2d at 1466 (*citing Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8–9 (1986) ("*Press-Enterprise Co. II*")). Under that test, known as the "experience and logic" test, a court considers: (1) "whether the place and process have historically been open to the press and general public," and (2) "whether public access plays a significant positive role in the functioning of the particular process in question." *Guerrero*, 693 F.3d at 1000-01 (quoting *Press-Enterprise Co. II*, 478 U.S. at 8). "Of course, there is no right of access which attaches to all judicial proceedings, even all criminal proceedings." *Phoenix Newspapers, Inc. v. U.S. Dist. Court*, 156 F.3d 940, 946 (9th Cir. 1998); *see also, e.g.*, *McGehee v. Casey*, 718 F.2d 1137, 1147 (D.C. Cir. 1983) ("As a general rule, citizens have no first amendment right of access to traditionally nonpublic government information.") (citations omitted).

Any information contained in the transcript that the NSA determines to be classified is information to which neither the press nor public has historically had access. Indeed, in the course of this very litigation, then-Chief Judge Walker addressed whether access should be granted to a classified filing pursuant to the First Amendment theory Plaintiffs advance here. Judge Walker recognized: "[t]he idea that there is a presumptive right of public and press access to court proceedings . . . as a common-law tradition and a tenet of good government seems uncontroversial, but plaintiffs' attempt to attach a strict scrutiny standard to limitations on access in the present context is not well-founded. It is fair to say that there is an equally uncontroversial presumption that the public and the press will *not* have access to court proceedings involving classified information." *In re: NSA Telecomms. Records Litig.*, 633 F. Supp. 2d 949, 974 (N.D. Cal. 2009);[1] *see also, e.g.*, *Chicago & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111

[1] There, statutory defenses under Section 802 of the FISA Amendments Act of 2008 were before the Court. *See* 633 F. Supp. 2d at 956–57. Section 802 provides immunity to persons in connection with their "assistance to an element of the intelligence community" if the Attorney General certifies that certain conditions are met. *Id.* Section 802 allows the Government to submit that certification and related materials *in camera* and *ex parte* if the Attorney General files a statement under penalty of perjury that disclosure of the certification and related materials would harm national security. *See id.* at 958. Plaintiffs and members of the

(1948) ("The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world."). Indeed, it is well-settled that classified materials are not subject to disclosure in civil proceedings. *See Al-Haramain*, 507 F.3d at 1196–97 (following *United States v. Reynolds*, 345 U.S. 1 (1953)); *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1079 (9th Cir. 2010) (same).

Nor does any inadvertent disclosure during an emergency hearing waive the classified status of the information or confer a First Amendment right of access to it.[2] The Court of Appeals in *Al-Haramain* affirmed that the inadvertent disclosure of a classified document did not alter its classified status notwithstanding that a reporter for *The Washington Post* had reviewed the document when researching an article. *See* 507 F.3d at 1194–95, 1203. Likewise, in *American Library Ass'n v. Faurer*, 631 F. Supp. 416, 422–23 (D.D.C. 1986), *aff'd on other grounds*, 818 F.2d 81 (D.C. Cir. 1987), the court held that inadvertent public disclosure of classified documents did not create a First Amendment right of access to their contents. There, librarians mistakenly placed classified materials belonging to the NSA on the open shelves of the

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press challenged the "secret filing and evidence provisions of section 802," arguing that they violated the First Amendment. *Id*. at 972. As discussed above, the Court rejected those challenges, noting that "courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." *Id*. at 973 (quoting *Egan*, 484 U.S. at 530).

[2] Plaintiffs imply that the potential disclosure was not inadvertent, "but was freely made by a party litigant for strategic purposes." Pls.' Resp. at 4; *see also id*. at 5 (arguing that the Government must prove that "the disclosure, which was made for strategic purposes in a contested matter in which the Government prevailed, was not the result of fault or neglect chargeable to the Government and was not simply a calculated strategic choice"). The suggestion that the Government intentionally disclosed classified information at the hearing is utterly baseless and ignores the context of the June 6 emergency hearing. The Government had less than 24 hours to prepare a memorandum to the Court regarding severe operational consequences for the NSA's national security mission that would have resulted from the Order that had just been entered, and to prepare for the hearing that was held shortly after the Government filed its submission. Especially under these exigent circumstances, the risk of an inadvertent disclosure was greater than usual in a case such as this, and there is no basis for Plaintiffs' suggestion that the potential disclosure of classified information during the hearing was anything other than inadvertent.

library of the Virginia Military Institute. *See* 631 F. Supp. at 418–19. When the NSA discovered that the documents had been made available to the public, the agency instructed the library to remove those materials from the open shelves. *See id.* at 419. Researchers asserted a First Amendment right of access to these inadvertently disclosed classified materials, but the court found that "public disclosure alone is not a sufficient basis for finding a first amendment violation where the national security is at stake." *Id.* at 422; *see also, e.g., Nuclear Control Institute v. U.S. Nuclear Regulatory Comm'n*, 563 F. Supp. 768, 771 (D.D.C. 1983) ("[T]he unauthorized publication of a classified document does not require either declassification or disclosure of the document under the Freedom of Information Act.").

For their part, Plaintiffs cite no case law to support their extraordinary assertion "that the Government must prove more than just that classified, secret information was released." Pls.' Resp. at 5. Indeed, none of the cases discussed in Plaintiffs' Response addresses the disclosure of classified information. Instead, the cases Plaintiffs cite in their discussion of "highly sensitive" or "secret" information, Pls.' Resp. at 3, address "the conflict between truthful reporting and state-protected *privacy interests*" of either juvenile defendants or rape victims and their families. *The Florida Star v. B.J.F.*, 491 U.S. 524, 530 (1989) (describing *Cox Broad. Corp. v. Cohn*, 420 U.S. 469 (1975); *Oklahoma Publ'g Co. v. Oklahoma Cnty. Dist. Court*, 430 U.S. 308 (1977); and *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97 (1979)) (emphasis added). And while the cases on which Plaintiffs rely all address government actions that restrained or imposed post-publication sanctions on the press, *see* Pls.' Resp. at 2–4, the Government's proposal here does neither. On the contrary, as Plaintiffs noted, the June 6 hearing "received broad reporting in the media," Pls.' Resp. at 1 n.1 (listing articles). The Government's proposal would have no effect on those reports. Because neither the press coverage of the June 6 proceedings nor any individual's privacy interests are at issue here, the cases Plaintiffs cite are inapposite.

In sum, there was no First Amendment right of access to the classified information before the emergency hearing, and any inadvertent disclosure that may have occurred during the hearing did not create such a right.

C. Plaintiffs Have No Due Process Right to Access Inadvertently Disclosed Classified Information.

Plaintiffs also argue that the Government's request for an opportunity to determine whether classified information was inadvertently disclosed "fails to comport with due process," because they are entitled to full access to the contents of the transcript. Pls.' Resp. at 2. Plaintiffs cite no case law to support that position. Indeed, there is no precedent to support a due process right to inadvertently disclosed classified information.

Procedural due process constrains governmental actions that deprive individuals of "liberty" or "property" within the meaning of the Fifth and Fourteenth Amendments. *Mathews v Eldridge*, 424 U.S. 319, 332 (1976). But Plaintiffs have no "liberty" or "property" interest in inadvertently disclosed classified information, and have made no attempt to demonstrate that they do. *See* Pls.' Resp. at 2.

Furthermore, Plaintiffs' due process interests, assuming they had any, in accessing classified information that may have been inadvertently disclosed during the June 6, 2014 hearing are outweighed by the considerable public interests against the disclosure of classified information. The Supreme Court set forth the balancing test for procedural due process claims in *Mathews v Eldridge*. *See In re NSA Litig. Telecomms. Records Litig.*, 671 F.3d 881, 903 (9th Cir. 2011) (citing the *Mathews v. Eldridge* test in deciding there was no right of access to a classified filing). To determine what process is constitutionally required, the Court must consider not only the Plaintiffs' interests that will be affected, but also the "Government[al] interest, including the function involved" and the "burdens that the additional or substitute procedural requirements would entail." *Mathews*, 424 U.S. at 335.

As discussed above, the Supreme Court has recognized that "[t]he Government has a compelling interest in protecting . . . the secrecy of information important to our national security." *Snepp v. U.S.*, 444 U.S. 507, 510 n.3 (1980) (per curiam). Accordingly, even in cases—unlike the one now before the Court—where the Government has taken action that adversely affects an individual's liberty or property interest based on classified information, the Court of Appeals has repeatedly recognized the Government's compelling interest in protecting

classified information from unauthorized disclosure. *See, e.g., Al Haramain Islamic Found., Inc. v. U.S. Dep't of the Treasury*, 686 F.3d 965, 981 (9th Cir. 2012) (due process did not require that an entity be given access to classified information based on which the government designated it as "a specially designated global terrorist"); *id.* (noting that "in a military criminal trial, government's use of classified information, without permitting the defendant or his lawyers to view the information, did not violate the defendant's due process rights") (citing *United States v. Ott*, 827 F.2d 473, 477 (9th Cir. 1987)). Accordingly, there is no due process basis for Plaintiffs to access any classified information that may have been inadvertently disclosed.

II. THE COURT SHOULD PERMIT THE GOVERNMENT TO REVIEW THE TRANSCRIPT OF THE JUNE 6 HEARING AND SUBMIT ANY PROPOSED REDACTION AND ACCOMPANYING EXPLANATION TO THE COURT *EX PARTE* AND *IN CAMERA*.

The Court ordered that the Government provide a "proposed procedure for the Court to make a determination regarding whether and how the specific portions of the transcript should be redacted." June 23, 2014 Order. The Government proposes a simple two-step procedure. First, the Court should release a copy of the transcript to the Government and give the Government two weeks to determine whether it contains classified information that should be redacted to protect national security and, if so, explain the need to do so to the Court. Plaintiffs cannot, of course, participate in this review process because they are not authorized to access classified information. *See Egan*, 484 U.S. at 529; *Dorfmont v. Brown*, 913 F.2d 1399, 1401, 1403 (9th Cir. 1990); Exec. Order 13526 §§ 4.1, 6.1(dd), 75 Fed. Reg. 707 (Dec. 29, 2009). *See also United States v. Daoud*, --- F.3d ---, 2014 WL 2696734 (7th Cir. June 16, 2014) (district court erred by ordering disclosure of classified information to defense counsel in Foreign Intelligence Surveillance Act proceeding). Nor, unlike the Executive, do Plaintiffs have any expertise in evaluating potential harm to national security from the disclosure of classified information. *See, e.g.*, *Egan*, 484 U.S. at 529 (judgments as to harm that would result from disclosure of certain information "must be made by those with the necessary expertise in protecting classified information"); *Sims*, 471 U.S. at 176-77 (deferring to judgment of Executive Branch to protect sources and methods as those decisions "will often require complex, political, historical, and

psychological judgments"); *El-Masri*, 479 F.3d at 305 (recognizing the Executive's "superior position" in "evaluating the consequences of a release of sensitive information"); *Halkin v. Helms*, 598 F.2d 1, 8, 9 (D.C. Cir. 1978) (rejecting a plaintiff's argument challenging the classification of a fact as "naïve" because what "may seem trivial to the uninformed[] may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context").[3]

Importantly, this first step may well end the matter because the transcript may not contain classified information requiring a redaction at all; in that event, the Government will so notify the Court and the transcript may be released in full. The Government's concern that the transcript may contain classified information is, at this stage, based on its counsel's recollection of the hearing. Further review may in fact show that no classified information was revealed. In short, the Government needs to review the transcript as a first, and possibly only, step in determining whether there is a classification issue.

Second, if the Government's review of the transcript reveals that it contains classified information, the Government proposes that, also within two weeks of receiving the transcript, it will file for the Court's *ex parte, in camera* review a copy of the transcript with its proposal for the removal of the classified information. The Government also proposes that this filing be accompanied by a supporting declaration explaining the classified nature of the information and why, despite its inadvertent disclosure, any further disclosure may reasonably be expected to cause damage to national security.

This proposed *ex parte, in camera* procedure is consistent with the approach the Court of Appeals took in *Al-Haramain*. 507 F.3d at 1190. As noted above, in *Al-Haramain*, the court affirmed that a document remained classified notwithstanding that the Government inadvertently disclosed it to the plaintiff in that case, and that a reporter from *The Washington Post* reviewed the inadvertently disclosed document while researching an article. *Id.* at 1194–95, 1203. The court noted that the plaintiff had become "privy to knowledge that the government fully intended

[3] Plaintiffs' counsel's opinion that no classified information was revealed (Pls.' Resp. at 1, 4) is thus entitled to no weight.

to maintain as a national security secret," *id.* at 1203, but concluded—after *in camera, ex parte* review—that the document remained protected. *Id.* The court observed that such an *ex parte* procedure "places on the court a special burden to assure itself that an appropriate balance is struck between protecting national security matters and preserving an open court system." *Id.* *See also In re NSA Litig. Telecomms. Records Litig.*, 671 F.3d at 902 (9th Cir. 2011) ("Courts have consistently upheld *in camera* and *ex parte* reviews when national security information is concerned.").[4]

The need to protect classified national security information is no different here than it was in *Al-Haramain*, even though the potential inadvertent disclosure now before the Court occurred through an oral statement made at a hearing rather than through a document disclosure. Just as the court in *Al-Haramain* took steps to protect the inadvertently disclosed information, including *ex parte, in camera* review where appropriate, this Court should do the same here by adopting the Government's proposed two-step approach.

III. THE COURT SHOULD DENY PLAINTIFFS' ADMINISTRATIVE MOTION TO UNSEAL.

The Government requested that its letter notifying the Court of its belief that the transcript of the June 6 hearing might contain classified information be maintained *ex parte, in camera*, "to avoid public speculation as to what statement in the transcript may contain classified information." June 12, 2014 Letter at 1. While the Court did not grant this request, it did order that filings and orders related to the Government's request for classification review be maintained under seal. Granting Plaintiffs' administrative motion to unseal any such orders and filings could lead to public speculation about the nature of the (potentially) classified information

[4] The proposed procedure is also consistent with how courts handle cases involving state secrets assertions, *see, e.g.*, *Kasza v. Browner*, 133 F.3d 1159, 1170 (9th Cir. 1998) ("Based on our *in camera* review of . . . classified declarations, we are satisfied that the [agency] properly employed the mosaic theory of classification and the state secrets privilege to withhold information requested in [plaintiff's] various discovery requests."), and the proposed withholding of classified information in Freedom of Information Act cases. *See, e.g.*, *Salisbury v. United States*, 690 F.2d 966, 973 n.3 (D.C. Cir. 1982) (excluding plaintiff's counsel from court's review of the withheld classified information); *Weberman v. NSA*, 668 F.2d 676, 678 (2d Cir. 1982) (same).

revealed in the transcript—speculation that the Government sought to avoid by submitting its request *ex parte* and *in camera*—before it has even been determined whether the transcript in fact contains classified information and before the Government has asked to make any changes to the transcript. Plaintiffs' administrative motion to unseal should be denied.

Unsealing the orders and filings related to this issue would draw attention to a possible inadvertent disclosure of classified information during the hearing. That would invite anyone who attended the hearing to scrutinize their recollection of the hearing and any notes memorializing the hearing to ascertain what statement could have been classified. Plaintiffs' response itself notes that the hearing was "held in a crowded courtroom and covered extensively by the press." Pls.' Resp. at 1 & n.1. If the transcript is eventually made public without any changes, the public could further speculate about what statements raised classification concerns. If the transcript is eventually redacted, the public would be able to compare the transcript against accounts of the hearing to attempt to determine the content of any redactions. Under either scenario, unsealing the orders and filings related to the Government's request for classification review informs the public that classified information could have been revealed at the hearing and invites public speculation about, and thus draws attention to, what classified information potentially is at issue. At bottom, Plaintiffs' motion risks the unauthorized disclosure of classified information and should be denied.

Also, Plaintiffs' citation of Local Rule 79-5(d)(1)(B) shows the premature nature of their motion. That rule requires that a motion to seal be accompanied by a proposed order "that is narrowly tailored to seal only the sealable material, and which lists in table format each document or portion thereof that is sought to be sealed." The Government could not have complied with this rule, even if it had filed a motion to seal (which it did not), because it did not know if the transcript contains any sealable material to begin with, and it certainly could not have identified it with particularity in the yet-to-be-received transcript. The Government therefore took the only steps possible under the circumstances to carry out its obligation to protect national security interests. It brought the matter to the Court's attention and proposed a

reasonable first step of obtaining an advance copy of the transcript to determine if classified information had been inadvertently disclosed.

CONCLUSION

For the foregoing reasons, the Government Defendants respectfully request that the Court allow the Government Defendants to review the June 6, 2014 transcript to determine whether it contains any inadvertently disclosed classified information, and deny the Plaintiffs' Administrative Motion to Unseal.

Dated: June 30, 2014

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