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	- TOP SECRET//TSP/SI-	/HCS//ORCON/NOFORN_
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7	Civil Division, Federal Programs Branch	na namadanaman anamangangan ni "nam" milan akan akan akan akan anamanan madanaman madan anan anakan akan akan a
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- 13	UNITED STATES D	
	 NORTHERN DISTRIC 	
14	SAN FRANCISO	CODIVISION
- 15		
	CAROLYN JEWEL, et al.) No. 08-cv-4873-JSW
16	Plaintiffs,) CLASSIFIED DECLARATION
17) OF JAMES R. CLAPPER
) DIRECTOR OF NATIONAL
18	v .) INTELLIGENCE
19		
19	NATIONAL SECURITY AGENCY, et al.) EX PARTE, IN CAMERA
20) SUBMISSION
	Defendants.)
21		_)
22		Date: November 2, 2012
_		Time: 9:00 a.m.
23		Courtroom: 11 - 19 th Floor
24		Judge Jeffrey S. White
25	L Inmas D Classes de la set	
26	I, James R. Clapper, do hereby state and de	ectare as follows:
	NU INTEROL	NUCTION
27	The INTROL	JUCTION
28	1. (U) I am the Director of National 1	Intelligence (DNI) of the United States. I have
20		anometrico (Divi) or the Office States. I have
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	Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)	

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held this position since August 9, 2010. In my capacity as the DNI, I oversee the United States Intelligence Community and serve as the principal intelligence adviser to the President. Prior to 2 3 serving as the DNI, I served as the Director of the Defense Intelligence Agency from 1992 to 1995, the Director of the National Geospatial-Intelligence Agency from 2001 to 2006, and the Under Secretary of Defense for Intelligence from 2007 to 2010, where I served as the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense on intelligence, 7 counterintelligence, and security matters for the Department of Defense. In my capacity as the 8 Under Secretary of Defense for Intelligence, I simultaneously served as the Director of Defense 10 Intelligence for the DNI.

2. (b) The purpose of this declaration is to formally assert, in my capacity as the 12 13 Director of National Intelligence and head of the United States Intelligence Community, the state 14 secrets privilege and a statutory privilege under the National Security Act, see 50 U.S.C. § 403-15 1(i)(1), in order to protect intelligence sources and methods that are at risk of disclosure in the 16 above-captioned case as well as in Shubert v. Obama (07-cv-00693) (M: 06-cv-1791). The 17 statements made herein are based on my personal knowledge as well as on information provided 18 19 to me in my official capacity as the Director of National Intelligence.

YU SUMMARY

3. (b). In the course of my official duties, I have been advised of this lawsuit and the 22 allegations at issue in the plaintiffs' complaints in the Jewel and Shubert actions. In personally 23 24 considering this matter, I have executed a separate unclassified declaration dated September 12, 25 2012. Moreover, I have read and personally considered the information contained in the Public 26 and the In Camera, Ex Parte Declaration of Frances J. Fleisch, National Security Agency (NSA), 27 executed on September 11, 2012 (hereafter "Classified NSA Declaration"). Disclosure of the 28

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TOP SECRET//TSP/SI information covered by my and NSA's privilege assertions reasonably could be expected to cause exceptionally grave damage to the national security of the United States and, therefore, the information should be excluded from any use in this case. In addition, it is my judgment that
2 cause exceptionally grave damage to the national security of the United States and, therefore, the
³ information should be excluded from any use in this case. In addition, it is my judgment that
⁴ sensitive state secrets concerning NSA's sources, methods and activities are so central to the
⁵ subject matter of the litigation that any attempt to proceed in this case will substantially risk the
6 7 disclosure of the classified privileged national security information described herein and will
8 therefore risk exceptionally grave damage to the national security of the United States.
9 4. (TS://TSP/SI (OC/NF)_As the NSA states, the allegations in this
¹⁰ lawsuit put at risk of disclosure information concerning several highly classified and critically
11 important NSA intelligence activities that commenced after the 9/11 terrorist attacks, which were
12 13 subsequently transitioned to the authority of the Foreign Intelligence Surveillance Act ("FISA"),
and continue to be utilized by the NSA. See Classified NSA Declaration ¶¶ 5-11; 27-51.
15 5 (TS//TSP/SI-COC/NF) In order to address plaintiffs' allegation that
¹⁶ the NSA, with the assistance of telecommunication companies including AT&T and Verizon, has
¹⁷ indiscriminately intercepted the content and obtained the communications records of millions of
¹⁰ ordinary Americans as part of an alleged presidentially authorized "Program" after 9/11, see,
20 e.g., Jewel Complaint at ¶¶ 2-13; 39-97; Shubert Second Amended Complaint (SAC) ¶¶ 1-7, 62-
²¹ 91, further litigation risks the disclosure of information concerning several classified NSA
²² intelligence activities, sources and methods,
23 24 in connection with NSA's (1) targeted
25 content surveillance aimed at al-Qa'ida and affiliated terrorist organizations, pursuant to the
²⁶ Terrorist Surveillance Program ("TSP") and later pursuant to FISA authority; (2) the bulk
²⁷ collection and targeted analysis of non-content information about telephone and Internet
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Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)

1	TOP SECRET//TSP/Simple Communications—critically important and highly sensitive activities that have also been
2	conducted pursuant to Foreign Intelligence Surveillance Court ("FISC") orders, or other
3	authority, and that enable the NSA to uncover the contacts
4	; and (3)
5	
7	
8	. This lawsuit therefore puts at risk of disclosure
.9	information concerning essential foreign intelligence-gathering activities utilized to meet the
10	extremely serious threat of another terrorist attack on the U.S. Homeland, a threat which I
11 12	describe further below.
12	6. (TS//TSP/SI-COC/NF) Accordingly, as set forth further below, I am
14	asserting the state secrets privilege and the DNI's authority to protect intelligence sources and
15	methods pursuant to 50 U.S.C. § $403-1(i)(1)$ to protect against the disclosure of the highly
16	classified intelligence sources and methods put at issue in this case and vital to the national
17 18	security of the United States, including: (1) any information that would tend to confirm or deny
19	whether particular individuals, including the named plaintiffs, have been subject to the alleged
20	NSA intelligence activities; (2) information concerning NSA intelligence sources and methods,
21	including facts demonstrating that the content collection under the TSP was limited to specific
22	al-Qa'ida and associated terrorist-related international communications and that the NSA did not
23	and does not otherwise conduct a dragnet of content surveillance as plaintiffs allege; (3) facts
25	that would tend to confirm or deny other intelligence activities authorized by the President after
26	9/11 and later transitioned to the authority of the FISA – that is, the existence of the NSA's bulk
27	non-content (i.e., meta data) collection, and any information about those activities; and (4)
28	
	TOP SECRET //TSP/SI
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I specifically concur with the NSA that public speculation about alleged NSA activities does not diminish the need to protect intelligence sources and methods from further exposure, and that official confirmation and disclosure of the classified privileged national security information described herein would cause exceptionally grave damage to the national security. For these reasons, as set forth further below, I request that the Court uphold the state secrets and statutory privilege assertions that I make herein, as well as the statutory privilege assertion made by the NSA pursuant to Section 6 of the National Security Agency A
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⁹ privilege assertion made by the NSA pursuant to Section 6 of the National Security Agency A
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see 50 U.S.C. § 402 (note), and protect the information described in this declaration from
11 disclosure.
12 13 (W) CLASSIFICATION OF DECLARATION
14 7. (S//SI//NF) Pursuant to the standards in Executive Order 13526, this declaration
¹⁵ is classified as: TOP SECRET//TSP/SI //HCS//ORCON/NOFORN. The details
16 concerning these classification markings are set forth in the Classified NSA Declaration at ¶¶
17
18 15 and are briefly summarized here. Under Executive Order 13526, information is classified
¹⁹ "TOP SECRET" if unauthorized disclosure of the information reasonably could be expected to
²⁰ cause exceptionally grave damage to the national security of the United States; "SECRET" if
²¹ unauthorized disclosure of the information reasonably could be expected to cause serious
damage to national security; and "CONFIDENTIAL" if unauthorized disclosure of the
$\frac{23}{24}$ information reasonably could be expected to cause identifiable damage to national security. A
25 the beginning of each paragraph of this declaration, the letters "U," "C," "S," and "TS" indica
²⁶ respectively that the information is either UNCLASSIFIED, or is classified CONFIDENTIAL
²⁷ SECRET, or TOP SECRET.
28
TOP SECRET//TSP/SI- TOP SECRET/TSP/SI- TOP SECRET//TSP/SI- TOP SECRET/TSP/SI-
Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence
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	TOP SECRET//TSP/SH	
1	8(S//SI//NF)- Additionally, this declaration also contains Sensitive Compartmented	
2	Information (SCI), which is subject to special access and handling requirements because it	
3	involves or derives from particularly sensitive intelligence sources and methods. This	
4	declaration references communications intelligence, also referred to as special intelligence (SI),	
5	which is a subcategory of SCI that identifies information that was derived from exploiting	
7	cryptographic systems or other protected sources by applying methods or techniques, or from	
8	intercepted foreign communications. This declaration also references human intelligence (HCS),	
9	another subcategory of SCI that identifies information derived from individuals who provide	
10	intelligence information.	
	9. (TS//TSP/SI-COC/NF) This declaration also contains information	
15	about the Terrorist Surveillance Program (TSP), a controlled access signals intelligence program	
16	under presidential authorization in response to the attacks of September 11, 2001. Information	
17 18	pertaining to this program is denoted with the special marking "TSP."	
19		
20		
21		
22	10. (S//SI//NF)_Finally, information labeled "NOFORN" may not be released to	
23 24	foreign governments, foreign nationals, or non-U.S. citizens without permission of the originator	
25	and in accordance with DNI policy. The "ORCON" designator means that the originator of the	
26	information controls to whom it is released.	
27		
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(U) BACKGROUND ON	DIRECTOR OF NATIONAL INTELLIGENCE

2	, 11. (U) The position of Director of National Intelligence was created by Congress in	
3	the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and	
4	1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of	
5 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).	
11	12. (W) The United States "Intelligence Community" includes the Office of the	
1 2 · · · 13	Director of National Intelligence; the Central Intelligence Agency; the National Security	un en
14	Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the	

¹⁵ National Reconnaissance Office; other offices within the Department of Defense for the
 ¹⁶ collection of specialized national intelligence through reconnaissance programs; the intelligence

elements of the military services, the Federal Bureau of Investigation, the Department of the
 Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast
 Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the
 Department of Homeland Security concerned with the analysis of intelligence information; and
 such other elements of any other department or agency as may be designated by the President, or

jointly designated by the DNI and heads of the department or agency concerned, as an element of
 the Intelligence Community. See 50 U.S.C. § 401a(4).

13. (b) The responsibilities and authorities of the Director of National Intelligence
are set forth in the National Security Act of 1947, as amended. See 50 U.S.C. § 403-1. These

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1	- TOP SECRET//TSP/SI- //HCS//ORCON/NOFORN //HCS//ORCON/NOFORN // responsibilities include ensuring that national intelligence is provided to the President, the heads
2	of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of
3	Staff and senior military commanders, and the Senate and House of Representatives and
4	committees thereof. See 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the
5	objectives of, determining the requirements and priorities for, and managing and directing the
6 7	tasking, collection, analysis, production, and dissemination of national intelligence by elements
8	of the Intelligence Community. Id. § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for
9	developing and determining, based on proposals submitted by the heads of agencies and
10	departments within the Intelligence Community, an annual consolidated budget for the National
11	Intelligence Program for presentation to the President, for ensuring the effective execution of the
12	annual budget for intelligence and intelligence-related activities, and for managing and allotting
13 14	appropriations for the National Intelligence Program. <i>Id.</i> § 403-1(c)(1)-(5).
15	14. (b) In addition, the National Security Act of 1947, as amended, provides that
16	"[t]he Director of National Intelligence shall protect intelligence sources and methods from
17	
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 21	information under applicable law, Executive orders, or other Presidential directives and access to
22	and dissemination of intelligence. Id. § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
23	for the establishment of uniform standards and procedures for the grant of access to Sensitive
24	Compartmented Information ("SCI") to any officer or employee of any agency or department of
25	the United States, and for ensuring the consistent implementation of those standards throughout
26	such departments and agencies. Id. § 403-1(j)(1), (2).
27 28	15. (U) By virtue of my position as the Director of National Intelligence, and unless
	Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)
	(Weiter Date (((((((((((((((((((

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1 2 3	- TOP SECRET//TSP/SI- //HCS//ORCON/NOFORN
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. See 50
	U.S.C. § 403-1(b); Executive Order 12333 § 1.3(a), as amended. Pursuant to Executive Order
4	13526, the President has authorized me to exercise original TOP SECRET classification
5	authority.
6	(b) ASSERTION OF STATE SECRETS PRIVILEGE
7	16. X After careful and actual personal consideration of the matter, based upon my
9	
10	own knowledge and information obtained in the course of my official duties, including the
11	information contained in the Public and Classified In Camera, Ex Parte Declaration of Frances J.
2	Fleisch, National Security Agency, I have determined that the disclosure of certain
13	information—as set forth herein and described in more detail in the Classified NSA
14	Declaration-would cause exceptionally grave damage to the national security of the United
15	States and, therefore, must be protected from disclosure and excluded from this case. Thus, as to
16	this information, I formally assert the state secrets privilege. In addition, it is my judgment that
17	sensitive state secrets concerning NSA's sources, methods and activities are so central to the
18	
19	subject matter of the litigation that any attempt to proceed in the case will substantially risk the
20	disclosure of the privileged information described herein and in more detail in the classified
21 22	declarations, and will therefore risk exceptionally grave damage to the national security of the
23	United States.
24	
25	(W) ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT
26	17. (b) Through this declaration, I also hereby invoke and assert a statutory privilege
27	held by the Director of National Intelligence under the National Security Act to protect the
28	information described herein, see 50 U.S.C. § 403-1(i)(l). My assertion of this statutory
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	SECRET//TSP/SI- gence sources and methods is coextensive with my state secrets privileg	ge
assertion.		
(b) INFOI	RMATION SUBJECT TO ASSERTIONS OF PRIVILEGE	
18. (14)	In general and unclassified terms, the following categories of information	ition
are subject to my s	tate secrets and statutory privilege assertions:	
A.	$\langle \mathbf{U} \rangle$ Information concerning the specific nature of the	
	terrorist threat posed by al-Qa'ida and its affiliates and other threats to the United States; and	
В.	(U) Information that may tend to confirm or deny whether	
	the plaintiffs have been subject to any alleged NSA intelligence activity that may be at issue in this matter; and	
C.	(U) Any information concerning NSA intelligence	
	activities, sources, or methods that may relate to or be necessary to adjudicate plaintiffs' allegations, including	
	allegations that the NSA, with the assistance of telecommunications carriers such as AT&T and Verizon,	
	indiscriminately intercepts the content of communications and also collects the communication records of millions of	
	Americans as part of an alleged "Program" authorized by the President after 9/11. See, e.g., Jewel Complaint ¶ 2-13;	
	39-97; Shubert SAC ¶¶ 1-9; 57-58; 62-91.	
	The scope of this assertion includes but is not limited to:	
	(i) (b) Information concerning the scope and	
	operation of the now inoperative "Terrorist Surveillance Program" ("TSP") regarding the interception of the content	
	of certain one-end international communications reasonably believed to involve a member or agent of al-	
	Qa'ida or an affiliated terrorist organization, and any other information related to demonstrating that the NSA does not	
	otherwise engage in the content surveillance dragnet that the plaintiffs allege; and	
	(ii) (K) Information concerning whether or not the	
	NSA obtained from telecommunications companies such as AT&T and Verizon communication transactional records as	
	alleged in the Complaint; <i>see</i> , <i>e.g.</i> , <i>Jewel</i> Complaint ¶¶ 10; 82-97; <i>Shubert</i> SAC ¶ 102; and	
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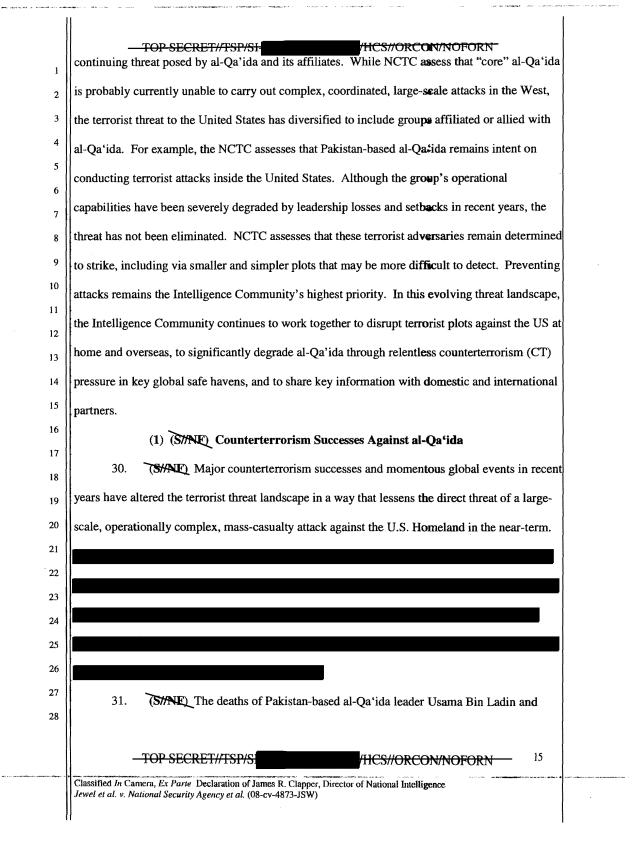
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1	(iii) (U) Information that may tend to confirm or
2	deny whether AT&T or Verizon (and to the extent relevant or necessary, any other telecommunications carrier),
3	provided assistance to the NSA in connection with any alleged activity, see, e.g., Jewel Complaint ¶¶ 2, 7-8, 10,
4	13, 50-97; Shubert SAC III 6, 10-13; 66-68.
5	(b) <u>DESCRIPTION OF INFORMATION SUBJECT TO PRIVILEGE AND HARM OF</u>
6 7	DISCLOSURE
, 8	A. (b) Information Concerning the al-Qa'ida Terrorist Threat
9	19. $(\not\!\!D)$ The intelligence activities, sources, and methods that are implicated by this
10	lawsuit, and put at risk of disclosure in further proceedings, must be viewed and understood in
11	the context of the threat faced by the United States. In unclassified terms, more than a decade
12	after the September 11 th attacks, we remain in a global conflict with al-Qa'ida and we face an
13	evolving threat from its affiliates and adherents. America's campaign against terrorism did not
14 15	end with the mission at Bin Ladin's compound. Indeed, the threats we face have become more
16	diverse. As al-Qa'ida's core leadership struggles to remain relevant, the group has turned to its
17	affiliates and adherents to carry out attacks and to advance its ideology. These groups are from
18	an array of countries, including Yemen, Somalia, Nigeria, and Iraq. To varying degrees, these
19 20	groups coordinate their activities and follow the direction of al-Qa'ida leaders in Pakistan. Many
21	of the extremist groups themselves are multidimensional, blurring the lines between terrorist
22	groups, insurgency, and criminal gangs.
23	20. (W) For example, al-Qa'ida in the Arabian Peninsula (AQAP) remains of
24	particular concern to the United States. The National Counterterrorism Center (NCTC) assesses
25 26	that this is the most likely entity to attempt attacks in the west. Even in the wake of Anwar al-
20	Aulaqi's death, this group maintains the intent and capability to conduct anti-US attacks with
28	little to no warning. In its three attempted attacks against the US Homeland the airliner plot of
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radio factore di colo di dicato e - a	Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)
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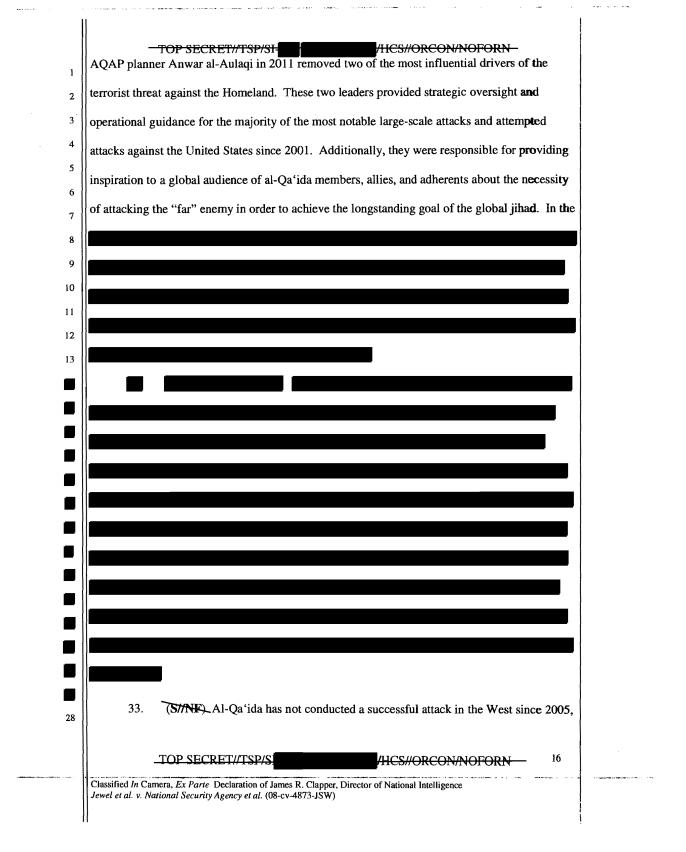
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1	TOP SECRET//TSP/SI- December 2009, an attempted attack against US-bound cargo planes in October 2010, and an	
2	airliner plot in May 2012 similar to the 2009 attempt AQAP has shown an awareness of the	
3	capabilities of Western security procedures and demonstrated its efforts to adapt. We remain	
4	concerned about AQAP's efforts to exploit the security vacuum associated with the Arab unrest,	
5	even though the group has suffered recent setbacks in these efforts. The death of al-Aulaqi	
6 7	probably temporarily slowed AQAP's external plotting efforts but did not deter the group from	
8	attempting another aviation attack in May 2012.	*
9	21. (B) AQAP has attempted to continue publishing the English-language Inspire	,
10	magazine—previously spearheaded by al-Aulaqi and now-deceased Samir Khan—in order to	
11	mobilize Western-based individuals for violent action. While the deaths of al-Aulaqi and Khan	
	have affected the quality of the magazine, the publication endures and continues to reach a wide	
13	global audience of extremists.	
15	22. (N) Similarly, since the withdrawal of US forces from Iraq in 2011, al-Qa'ida in	
16	Iraq (AQI) has conducted nearly monthly simultaneous coordinated country-wide attacks against	
17	government, security, and Shia civilian targets in Iraq. During the past two years its media	
18	statements have reaffirmed the group's commitment to al-Qa'ida's global ideology and have	
19 20		
20	encouraged attacks in the West. In July 2012, AQI's leader, Abu Du'a, a.k.a. Abu Bakr al-	
22	Baghdadi, issued his first public audio statement since taking over the group in 2010 in which he	
23	threatened to attack the US Homeland, praised the US defeat in Iraq, and applauded the actions	
24	of the Syrian population in rising up against the Asad regime. The statement included the	
25	phrase, "We say to those that have fallen out of communication, oh sleeping people wake up. Oh	
26 27	sitting people rise," which possibly is a call to Iraqi populations in and outside the region to	
27	become more involved in AQI activities.	
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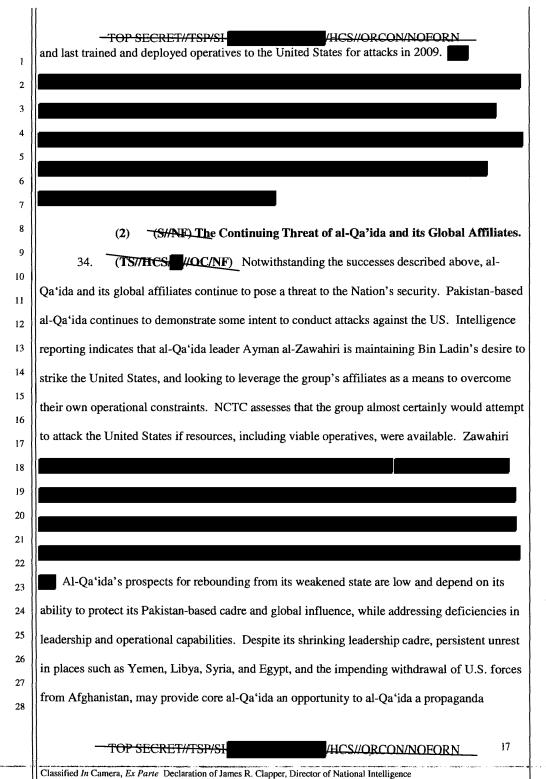
	TOP SECRET//TSP/SI- 23. (U) AQI's propaganda statements have cited its support for uprisings against
	secular governments in the Middle East and North Africa, and in a June statement, the group
	expressed solidarity with the Syrian Sunni population. In January 2011, it published an
	explosives training video that called for lone wolf attacks in the West and against so-called
	apostate regimes in the Middle East.
	24. UDUring the past two years, American and Canadian authorities have arrested
	several North America-based AQI associates, highlighting the potential threat posed to the
	United States. In May 2011, the FBI arrested Kentucky-based Iraqi nationals Waad Alwan and
	Shareef Hamadi for attempting to send weapons and explosives from Kentucky to Iraq and
•	conspiring to commit terrorism while in Iraq. Alwan pled guilty to supporting terrorism in
	December. In January 2010, Canadian authorities arrested dual Iraqi-Canadian citizen Faruq 'Isa
	who is accused of vetting individuals on the internet for suicide operations in Iraq.
	25. (We continue to monitor al-Shabaab and its foreign fighter cadre as a potential
	threat to the US Homeland, although the group is mainly focused on combating the ongoing
	Kenyan and Ethiopian incursions into Somalia which have eroded its territorial safehaven since
	late last year. The group, which formally merged with al-Qa'ida in February 2012, also remains
	intent on conducting attacks against regional and Western targets in East Africa, especially in
	countries supporting the Transitional Federal Government (TFG) and allied forces in Somalia.
	Probable al-Shabaab sympathizers recently conducted several low-level attacks in Kenya. Al-
	Shabaab leaders in the past have publicly called for transnational attacks, including threatening
	to avenge the January 2012 death of British national and al-Shabaab senior foreign fighter Bilal
	Berjawi.
	26. (W) Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) and Boko Haram
	TOP SECRET//TSP/SI
J	Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)

1	TOP SECRET//TSP/SI- have shown minimal interest in targeting the US Horneland and remain focused on local and
2	regional attack plotting, including targeting Western interests including through kidnap-for-
3	ransom operations. AQIM is actively working with local extremists in northern Mali to establish
4	a safehaven from which to advance future operational activities. Boko Haram probably has an
5	emerging awareness of US persons or entities in the US with connections to Nigeria. The group'
6	spokesman in April publicly threatened to find a way to attack a US-based news organization if
7	its coverage of Islam did not change.
8 9	
10	27. (b) In addition, while most Pakistani and Afghan militant groups pose a more
11	direct threat to U.S. interests and our allies in that region, the Intelligence Community continues $*$
12	to watch for indicators that any of these groups, networks, or individuals are actively pursuing or
13	have decided to incorporate operations outside of South Asia as a strategy to achieve their
14	objectives. Tehrik-e Taliban Pakistan (TTP) leaders have repeatedly threatened attacks against
15	the U.S., including after the death of Bin Ladin in Miay 2011. NCTC assesses that TTP's claim
16	of responsibility for the failed Times Square bombing in May 2010 demonstrates its willingness
17 18	to act on this intent.
19	28. (b)-To the extent classified information about the al-Qa'ida threat, from
20	September 11, 2001 to the present, or the many other threats facing the United States, would be
21	at issue in attempting to litigate this case, such information could not be disclosed without
22	revealing intelligence sources, methods, and information of the United States and thereby
23	causing exceptionally grave damage to the national security. Therefore, I assert the state secrets
24 25	and DNI statutory privilege to protect such information from disclosure. Some of the classified
26	threat information is described further below.
27	
28	29(S//OC/NF) The NCTC's current classified threat assessment underscores the
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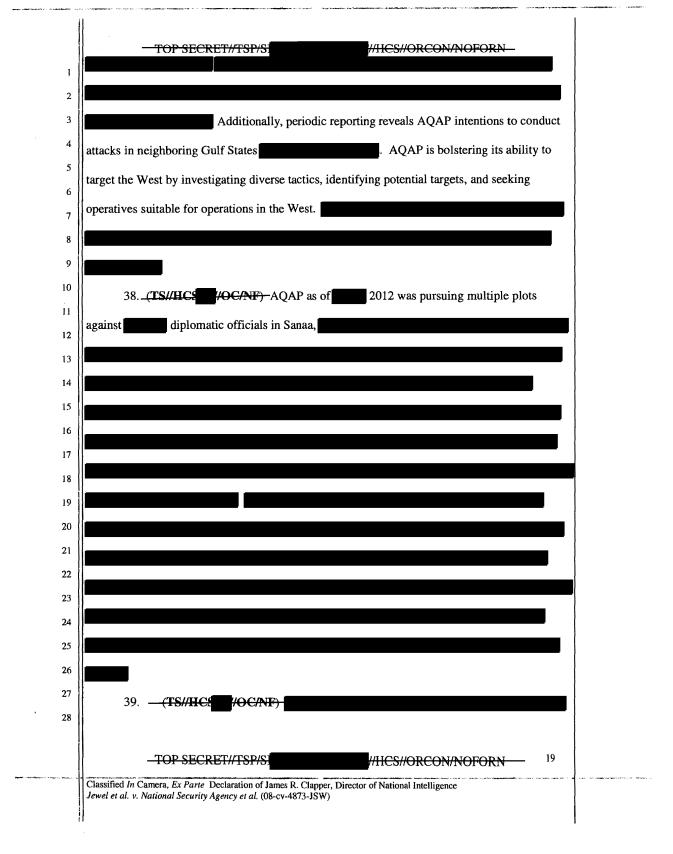


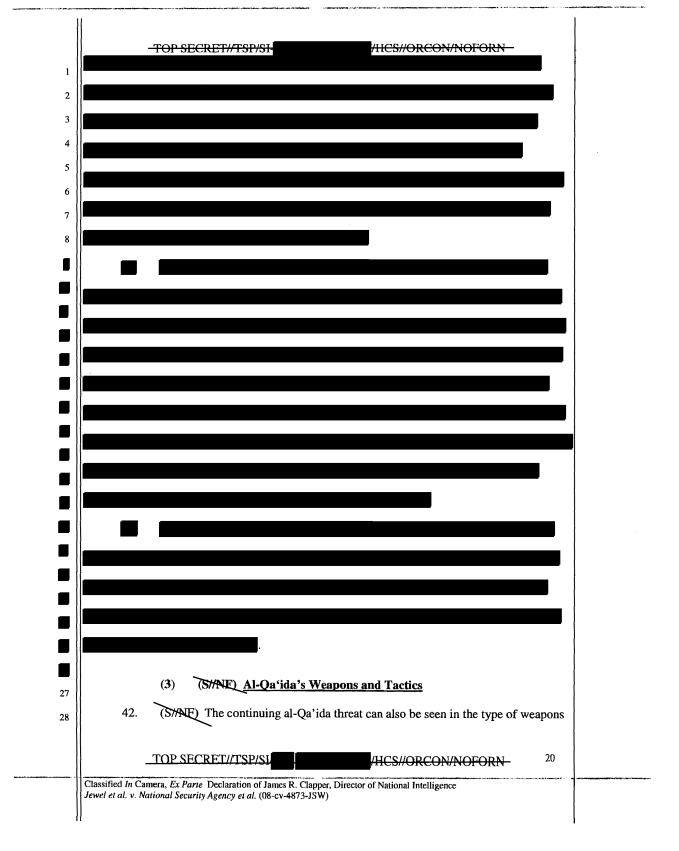


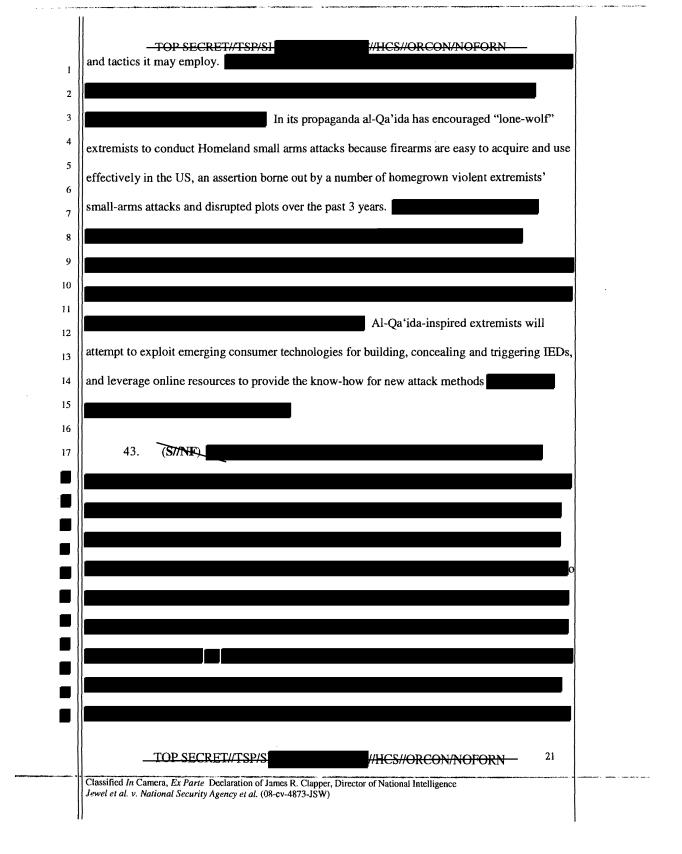


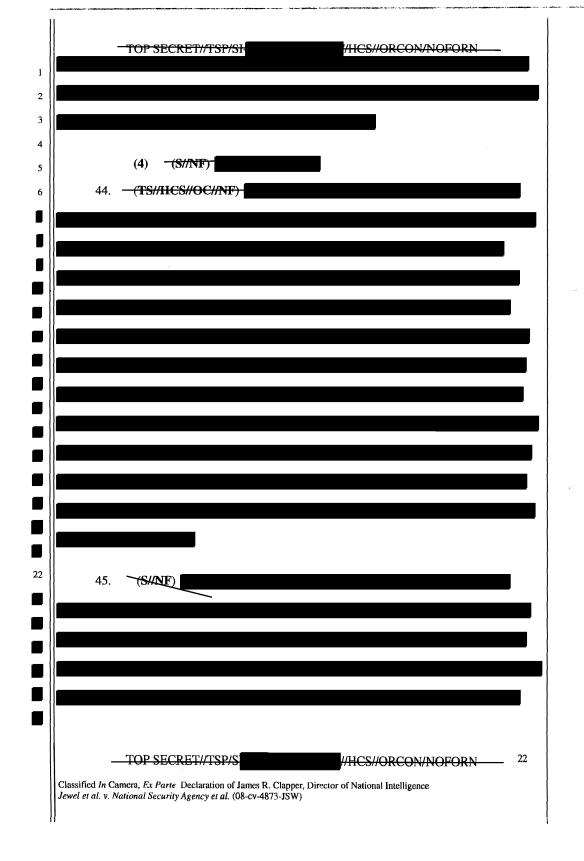
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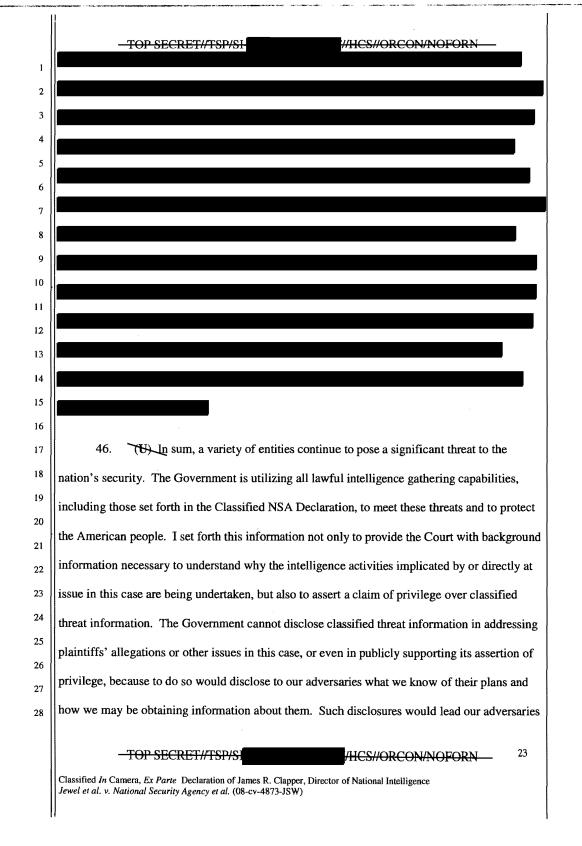
opportunity	y to claim victories over the US and reinvigorate its image as the leader of the global
movement.	
35.	(TS//IICS / OC/NF)
36.	(SHNF) In addition, against this backdrop of a weakened core al-Qa'ida, NCTC
	at in the coming years the U.S. will be facing a more interdependent and diverse
	eat than we have experienced to date, which will likely be more difficult to detect.
	ed set of terrorist adversaries
All expand	
1 T	in recent years have carried on al-Qa'ida's mantle and attempted to strike in and
	U.S. Homeland. Al-Qa'ida's affiliate groups are likely to remain committed to al-
	eology and to seek opportunities to strike US interests in their operating areas or in
	The intent and capability of each affiliate to conduct transnational attacks varies
widely, how	wever, in large part because of their focus on achieving local and regional goals.
However, i	ncreasing collaboration between al-Qa'ida's affiliates will further shift the focal point
of the glob	al jihad away from South Asia, in particular as the groups share expertise, advice and
inspiration	in ways that improve their attack capabilities and/or understanding of our
counterterr	orism capabilities and tactics.
37.	(TS//HCS QC/NF) AQAP continues its efforts to conduct attacks against in the
region and	in the West. AQAP remains committed to its regional agenda
-	
	amera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence











	1	
1	TOP SECRET//TSP/SI- not only to alter their plans, but also to implement greater security for their communications,	
2	thereby increasing the risk of non-detection. In addition, disclosure of threat information might	
3	reveal human sources for the United States, compromise those sources, and put lives in danger.	
4	Accordingly, although I believe that classified threat information is crucial to understanding the	
5	importance to our national security of the NSA intelligence activities, sources, and methods	
6 7	implicated by the plaintiffs' allegations, I must assert the state secrets privilege and the DNI's	
8	statutory privilege over this classified threat information because of the exceptionally grave	
9	danger to national security that could reasonably be expected to result from its disclosure.	
. 10		
11	B. (b) Information That May Tend to Confirm or Deny Whether the Plaintiffs Have Been Subject to the Alleged NSA Intelligence Activities.	
12	47. (b) Next, I am also asserting privilege over information that would reveal	
13	whether particular individuals, including the named plaintiffs in this lawsuit, have been subject	
14		
16	to the alleged NSA intelligence activities. Disclosure of such information would cause	
17	exceptionally grave damage to the national security.	
18	48. <u>(TS//TSP/SI//OC/NF)</u>	
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22 23		
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25		
26	Accordingly, I assert the state secrets and DNI statutory	
27	privilege as to this information.	
28		
	TOP SECRET//TSP/S	
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/HCS//ORCON/NOFORN TOP SECRET//TSP/SI-(U) The NSA cannot publicly confirm or deny whether any particular individual 49. 1 is subject to surveillance activities. If the NSA were to reveal that an individual is the target of 2 3 surveillance, the collection capability relating to that individual would certainly be compromised. 4 On the other hand, if the NSA were to reveal that an individual is not the target of surveillance, 5 adversaries would know that a particular individual has avoided surveillance and is a secure 6 source for communicating. Moreover, providing assurances to those individuals who are not 7 being targeted quickly becomes unworkable when faced with a case in which an individual has 8 9 in fact been targeted. If the NSA were to confirm that any specific individual is not the target of 10 surveillance, but later refuse to confirm or deny that information in a case involving an actual H target, it would be apparent that surveillance was occurring in the latter case. The only recourse 12 for the NSA is to neither confirm nor deny whether someone has been targeted or subject to NSA 13 activities, regardless of whether the individual has been targeted or not. To say otherwise when 14 15 challenged in litigation would result in the frequent, routine exposure of NSA information, 16 sources, and methods, and would severely undermine surveillance activities in general. 17 C. (U) Information Concerning NSA Activities, Sources, or Methods. 18 50. (U)-Furthermore, I am asserting privilege over any other facts concerning NSA 19 20 intelligence activities, sources, or methods that may relate to or be necessary to adjudicate the 21 plaintiffs' claims, including allegations that the NSA, with the assistance of telecommunications 22 companies including AT&T and Verizon, has indiscriminately intercepted the content and 23 obtained the communications records of millions of ordinary Americans as part of an alleged 24 25 presidentially authorized "Program" after 9/11. See, e.g., Jewel Comp. 99 2-13; 39-97; Shubert 26 SAC M 1-9; 62-91 As noted above, my privilege assertion encompasses (1) facts concerning the 27 operation of the now-defunct Terrorist Surveillance Program, including any facts needed to 28 25 TOP SECRET//TSP/SL /HCS//ORCON/NOFORN

Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)

	1	
1	TOP SECRET//TSP/SI- demonstrate that the TSP was limited to the interception of the content ¹ of one-end foreign	
2	communications reasonably believed to involve a member or agent of al-Qa'ida or an affiliated	
3	terrorist organization, and that the NSA does not otherwise conduct a dragnet of content	
4	surveillance as the plaintiffs allege; and (2) information concerning whether or not the NSA	
5	obtains transactional communication records from telecommunications companies such as	
6	AT&T and Verizon as plaintiffs allege.	
7	51. (U) As the NSA indicates, see Public NSA Declaration ¶ 11, the NSA's	
8		
	collection of the content of communications under the TSP was directed at international	
10	communications in which a participant was reasonably believed to be associated with al-Qa'ida	
11 12	or an affiliated organization. Thus, as the Government has previously stated, plaintiffs'	
13	allegation that the NSA has indiscriminately collected the content of millions of communications	
14	sent or received by people inside the United States after 9/11 under the TSP is false. I concur	
15	with the NSA that to the extent it must demonstrate in this case that the TSP was not the content	
16	dragnet plaintiffs allege, or demonstrate that the NSA has not otherwise engaged in the alleged	
17	content dragnet, highly classified NSA intelligence sources and methods about the operation of	
18		
19	the TSP and other NSA intelligence activities would be disclosed which would cause exceptional	
20	harm to national security. ²	
21		
22 23	¹ (W) The term "content" is used herein to refer to the substance, meaning, or purport of a communication, as defined in 18 U.S.C.§ 2510(8).	
23	² (U) The Government has publicly confirmed that, in addition to the "Terrorist	
24	Surveillance Program," other intelligence activities were authorized by the President after the 9/11 attacks in a single authorization that was periodically reauthorized. See Unclassified	
25	Inspector General Report on the President's Surveillance Program (10 July 2009) ("IG Rept.") at	
	5, available at <u>www.dni.gov/files/documents/Newsroom/Reports and Pubs/report_071309.htm</u> . However, those other intelligence activities remain highly classified, <i>see</i> Public IG Rept. at 5,	
27	and subject to the DNI privilege assertions. As the IG report also indicates, activities that were	
28	originally authorized by the President along with the TSP were subsequently authorized under orders issued by the FISC. <i>See</i> Public IG Rept. at 30. As a result of this transition, the final	
	TOP SECRET // TSP/SI-	
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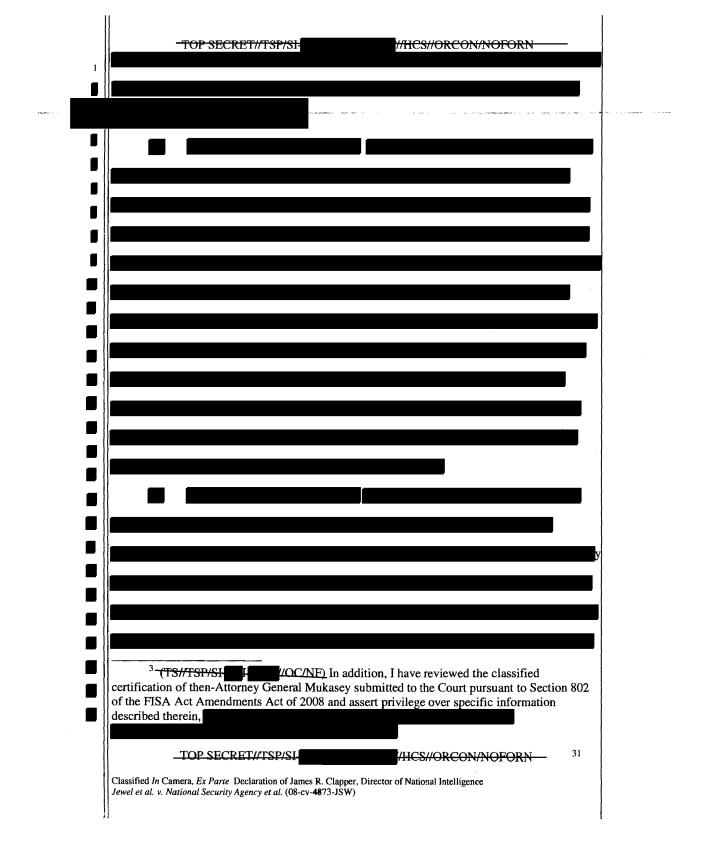
1	TOP SECRET//TSP/SI- //HCS//ORCON/NOFORN 52. (W). I am also asserting privilege over information concerning whether or not the
2	NSA obtained from telecommunications companies such as AT&T and Verizon the complete
3	and allegedly ongoing disclosure of private telephone and Internet transactional records of those
4	companies' millions of customers. I concur with the NSA that confirmation or denial of any
5	information concerning this allegation would cause exceptionally grave harm to national
6 7	security, including by risking disclosure of whether or not the NSA utilizes particular
8	intelligence sources and methods and, thus, the NSA's capabilities or lack thereof.
9	53. — (TS//TSP/SL//OC/NF)-In particular, as set forth in the Classified NSA
10	Declaration, the United States faced urgent and immediate intelligence challenges after the
11	September 11 attacks, and undertook signals intelligence activities pursuant to presidential
12 13	authorization that were designed to meet those challenges and to detect and prevent future
14	terrorist attacks by al-Qa'ida and its affiliates. Those activities include the TSP and similar
15	sources and methods of content surveillance that later became subject to FISA authority, as well
16	as the bulk collection of telephony and Internet non-content meta data that was also later
17 18	transitioned to FISA authority and used to discover contacts
19	See Classified NSA Declaration ¶¶ 27-51.
20	54. (U) Based on my personal consideration and judgment as to the harm disclosure
21	would cause to national security, my privilege assertion includes, but is not limited to, the
22	following activities discussed in the Classified NSA Declaration.
23 24	55(TS//TSP/SI//OC/NF) First, I assert privilege over facts concerning the operation
25	of the TSP and any other NSA intelligence activities needed to demonstrate that the TSP was
26	
27 28	presidential authorization for the Presidential Surveillance Program activities authorized after the 9/11 attacks expired on February 1, 2007. <i>Id.</i> at 30. To the extent plaintiffs' allegations seek to put at issue the nature of these other classified activities, they are encompassed by my privilege assertion in this litigation as well.
	TOP SECRET //TSP/SI //ICS//ORCON/NOFORN 27
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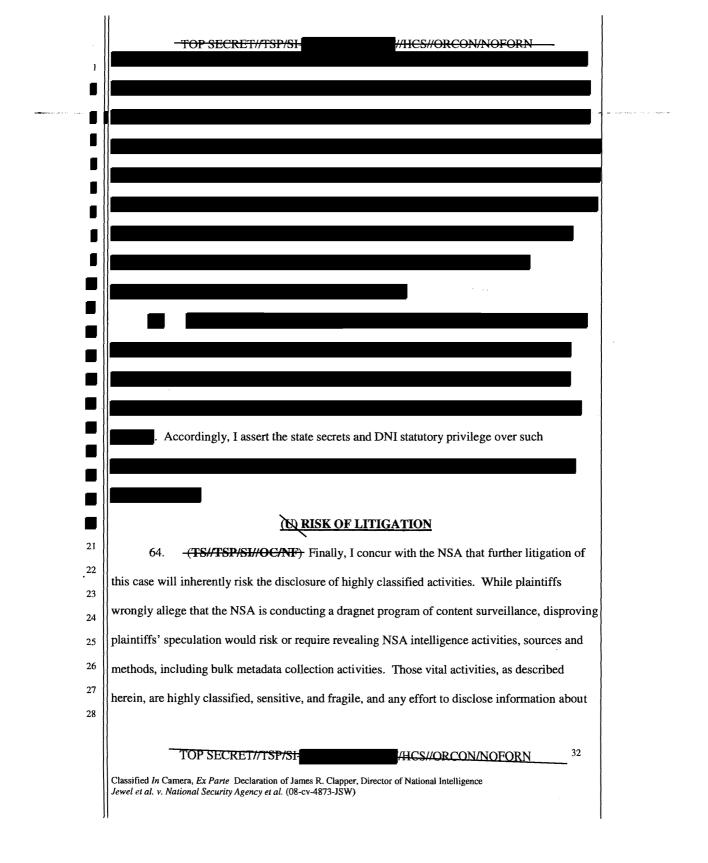
1	1
1	-TOP SECRET//TSP/SI- limited to the interception of one-end foreign communications reasonably believed to involve a
2	member or agent of al-Qa'ida or an affiliated terrorist organization, and that the NSA does not
3	otherwise conduct a dragnet of content surveillance as the plaintiffs allege. Such facts include
4	those concerning (1) how targets were selected under the TSP; (2) how specific methods were
5	used under the TSP to intercept telephone and Internet communications and to minimize the risk
6	of collecting non-target communications and purely domestic communications; (3) the nature
8	and identity of the targets under the TSP, Sector ; (4) and additional
9	classified details about the operation of the TSP that would be necessary to litigate the plaintiffs'
10	allegations (to the extent relevant) including facts concerning the operational swiftness and
11	agility of the TSP, particularly in conjunction with meta data analysis;
12 13	; and the effectiveness and success of the TSP;
13	and (5) other NSA surveillance activities that may be needed to address and disprove the content
15	dragnet allegations,
16	See Classified NSA Declaration ¶¶ 63-73. In my judgment, revealing or
17	risking disclosure of the foregoing NSA intelligence activities, sources, and methods in order to
18 19	show that the NSA is not conducting the "dragnet" on the content of communications that
20	plaintiffs allege would cause exceptional harm to national security by disclosing to our
21	adversaries the ability of the United States to monitor and track their activities and
22	communications.
23	56. (TS//TSP/SI//OC/NF)-Second, I also assert privilege over facts that would
24	
25 26	disclose or describe the NSA's meta data collection activities. <i>See</i> Classified NSA Declaration
26 27	¶¶ 74-83. In my judgment, the NSA is unable to disclose any information about the existence or
28	operation of the NSA's bulk collection or targeted analysis of Internet or telephony metadata
	Classified In Camera, Ex Parte Declaration of James R. Clapper, Director of National Intelligence Jewel et al. v. National Security Agency et al. (08-cv-4873-JSW)

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1	TOP SECRET//TSP/SI- without causing exceptionally grave harm to national security. These are among the most
2	important intelligence tools the NSA uses, and they have never been officially confirmed or
3	denied by the United States. Disclosing or confirming these activities would seriously
4	undermine an essential tool for tracking possible terrorist plots and would help foreign
5	adversaries evade detection. Such a disclosure would also undermine ongoing intelligence
6	operations authorized by the FISC.
8	57(TS//TSP/SI//OC/NF)-Finally, I also assert privilege over information
9	concerning NSA activities conducted pursuant to FISA authority and Executive Order 12333, as
10	described by the NSA. See Classified NSA Declaration ¶ 37-51; 84. In my judgment,
11	disclosure of current surveillance activities under these authorities, either directly or indirectly,
12	would seriously compromise, if not destroy, vital ongoing intelligence operations. My privilege
14	assertion extends to the existence of any information concerning the (i) FISC Pen Register Order,
15	as subsequently reauthorized until its expiration in December, 2011, see id. 19 48-51; (ii) FISC
16	Telephone Business Records Order, as subsequently reauthorized, see id. ¶ 47;
17 18	(iv) FISC Foreign Telephone and Email Order, see id.
19	III 38-40; (v) particular NSA sources and methods utilized under authority of the Protect
20	America Act and the FISA Amendments Act of 2008, including directives issued to particular
21	telecommunication carriers under those Acts, see id. III 41-45; and (vi) NSA's use of similar
22	sources and methods pursuant to Executive Order 12333, see id. § 82.
23 24	58 (TS//TSP/SL//OC/NF)- I concur with the NSA that the activities discussed herein
25	and described further by the NSAin particular the meta data collection activitiesare among the
26	most important intelligence tools available to the United States for protecting the Homeland from
27	another catastrophic terrorist attack. I also concur that
28	
	TOP SECRET//TSP/S
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......

	s. In my judgment, after personal
consideratio	n of the matter, disclosing the information described herein and by the NSA would
compromise	these critical activities, sources, and methods, thereby helping our adversaries evade
detection and	d causing exceptionally grave damage to the national security of the United States.
D.	(U) Plaintiffs' Allegations that Certain Telecommunications Carriers Provided Assistance to the NSA with the Alleged Activities.
59.	(b) In addition, I am asserting privilege over information that may tend to
confirm or d	eny whether or not AT&T, Verizon, or to the extent necessary, any other particular
telecommuni	ications provider, has assisted the NSA with alleged intelligence activities. The
disclosure of	any information that would tend to confirm or deny allegations of such assistance
would cause	exceptionally grave harm to the national security. Confirming or denying such
allegations, a	again, would reveal to foreign adversaries whether or not the NSA utilizes particular
intelligence	sources and methods and, thus, either compromise actual sources and methods or
disclose that	the NSA does not utilize a particular source or method. Such confirmation or denial
would also r	eplace speculation with certainty for hostile foreign adversaries who are balancing
the risk that	a particular channel of communication may not be secure against the need to
communicat	e efficiently.
60.	-(TS//TSP/SI
_	TOP SECRET//TSP/SL
	TOP SECRET//TSP/SH/HCS//ORCON/NOFORN 30





1	- TOP SECRET//TSP/SI
2	TU) CONCLUSION
4	65. (U) In sum, I am asserting the state secrets privilege and the DNI's statutory
5	privilege set forth in 50 U.S.C. § 403-1(i)(1) to protect the classified national security
6	information described herein and in the Classified NSA Declaration. Moreover, because
7	
8	proceedings in this case risk disclosure of privileged and classified intelligence-related
9	information, I respectfully request that the Court not only protect that information from
10	disclosure, but take all steps necessary, including dismissal of this action, to protect the
11	intelligence information, sources, and methods described herein in order to prevent exceptional
12	harm to the national security of the United States.
13	I declare under penalty of perjury that the foregoing is true and correct.
14	
15	DATE: September $\underline{\mathcal{H}}$, 2012
16	(and A)
17	CAMP2 CLADEED
18	Director of National Intelligence
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Always a Party

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-TOP SECRET//TSP/SI