



U.S. Department of Justice

United States Attorney  
Eastern District of New York

One Pierrepont Plaza  
Brooklyn, New York 11201

Mailing Address: 147 Pierrepont Street  
Brooklyn, New York 11201

January 18, 2005

Honorable David G. Trager  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Arar v. Ashcroft, et al., Civil Action No. 04-CV-249-DGT-VVP (E.D.N.Y.)

Dear Judge Trager:

As the United States advised in its June 21, 2004, pre-motion letter submitted pursuant to Your Honor's Individual Motion Practices, the United States was in the process of investigating whether or not it was necessary to assert the state secrets privilege in this case on the ground that litigating some or all of plaintiff's complaint would require the disclosure of classified information the disclosure of which would be "inimical to national security." Zuckerbraun v. General Dynamics Corp., 935 F.2d 544, 546 (2d Cir. 1991) (dismissing suit based on Navy's assertion of state secrets privilege); see also United States v. Reynolds, 345 U.S. 1, 7 (1953). By letter dated September 17, 2004, the United States advised the parties and the Court it would notify them as soon as that extensive inter-agency evaluation was complete.

This letter is to advise the Court that, after extensive review, the United States has determined it is necessary to assert the state secrets privilege over the information at the core of Counts I, II and III of plaintiff's complaint. The privilege is asserted by the declarations of James Comey, the Deputy Attorney General of the United States, acting by operation of law as Attorney General, and Tom Ridge, Secretary of the Department of Homeland Security. The assertion of the privilege is also supported by classified declarations further explaining the basis for asserting the privilege. Based on this assertion of the state secrets privilege, the United States respectfully submits that Counts I, II and III of plaintiff's complaint should be dismissed pursuant to Fed. R. Civ. P. 56 and judgment should be entered thereon in favor of all defendants, both in their individual and official capacities. See Zuckerbraun, 935 F.2d at 546. This ground for dismissal is independent of those asserted by the United States in its Motion to Dismiss pursuant to Fed. R. Civ. P. 12. The United States has enclosed herewith a copy of the public record materials supporting the privilege assertion sent to the Clerk for filing.

Counsel for the United States contacted the plaintiff, and attempted to contact counsel for each individual defendant, regarding a briefing schedule for this matter. We were unable to reach counsel for defendant Blackman. However, the plaintiff, and all other parties, are in agreement with the following schedule: the individual capacity defendants may file any response to the United States' assertion of the state secrets privilege within 21 days of the date the United States' Notice of Filing and supporting memorandum are filed. Plaintiff shall file his response to all defendants' submissions not later than 45 days after the individual defendants' responses are due. The United States shall submit any reply not later than 30 days thereafter. Enclosed herewith is a proposed order reflecting the schedule agreed upon by the noted parties, which the United States respectfully requests the Court to endorse.


Thank you for Your Honor's consideration.

Sincerely,

MARY HAMPTON MASON (MM 9148)  
Senior Trial Attorney  
JEREMY S. BRUMBELOW  
Trial Attorney  
United States Department of Justice  
Torts Branch, Civil Division  
Ben Franklin Station, P.O. Box 7146  
Washington, D.C. 20044  
Tel: (202) 616-4123  
Fax: (202) 616-4314

ROSLYNN R. MAUSKOPF  
United States Attorney  
Eastern District of New York  
One Pierrepont Plaza, 14th Floor  
Brooklyn, NY 11201-2776

By:

  
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SCOTT DUNN  
Assistant United States Attorney  
(718) 254-6029

cc: *Counsel for the plaintiff:*

Barbara J. Olshansky, Esq.  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, N.Y. 10012

*Counsel for defendant John Ashcroft:*

Larry Gregg, Esq.  
Assistant U.S. Attorney  
Eastern District of Virginia  
2100 Jamieson Ave.  
Alexandria, VA 22314

*Counsel for defendant Larry D. Thompson:*

John J. Cassidy, Esq.  
Stephen L. Braga, Esq.  
Baker Botts, L.L.P.  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

*Counsel for defendant Robert Mueller:*

Ira H. Raphaelson, Esq.  
O'Melveny & Myers, L.L.P.  
1625 Eye Street NW  
10th Floor  
Washington D.C. 20006-4001

Jim Walden, Esq.  
O'Melveny & Myers, L.L.P.  
Times Square Tower  
7 Times Square  
New York, N.Y. 10036

*Counsel for defendant James Ziglar:*

William Alden McDaniel, Jr., Esq.  
Law Offices of William Alden McDaniel, Jr.  
118 West Mulberry Street  
Baltimore, Maryland 21201-3606

*Counsel for defendant J. Scott Blackman:*

Thomas G. Roth, Esq.  
Law Offices  
395 Pleasant Valley Way, Suite 201  
West Orange, New Jersey 07052

*Counsel for defendant Edward J. McElroy:*

Debra L. Roth, Esq.  
Thomas M. Sullivan, Esq.  
Shaw, Bransford, Veilleux & Roth, PC  
1100 Connecticut Avenue, N.W., Ste. 900  
Washington, D.C. 20036-4101

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

MAHER ARAR,

Plaintiff,

v.

JOHN ASHCROFT, Attorney General  
of the United States, *et al.*,

Defendants

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No. 04-CV-0249-DGT-VVP

**ORDER**

The Court hereby approves the following schedule to govern the submission of briefs in response to the United States' assertion of the state secrets privilege:

1. Any Individual Federal Defendant who wishes to file a brief in response to the United States' submission will file his brief with the clerk of this Court (and serve all counsel) within 21 days of the date on which the United States' submission was filed;
2. Within 45 days thereafter, Plaintiff will file with the clerk (and serve all counsel) any response to the submissions of the United States and the Individual Federal Defendants;
3. Within 30 days thereafter, the United States will file with the clerk (and serve all counsel) its reply, if any, to the submissions of the Plaintiff and Individual Federal Defendants.

SO ORDERED.

BY THE COURT:

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DAVID G. TRAGER  
United States District Judge