

UNITED STATES DISTRICT COURT

for the
District of Columbia

United States of America
v.
JAMES F. HITSSELBERGER
Defendant(s)

Case No.

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about April 11, 2012, at the Naval Support Activity – Bahrain, outside the jurisdiction of any particular state or district of the United States, but within the extraterritorial jurisdiction of the United States and therefore, pursuant to Title 18, United States Code, Section 3239, within the venue of the United States District Court for the District of Columbia, the defendant violated:

Code Section
18 U.S.C. § 793(e)

Offense Description
Unlawful Retention of National Defense Information

This criminal complaint is based on these facts:

See Attached Affidavit

[X]Continued on the attached sheet.

Complainant's signature

Special Agent Marcus Andre Morgan

Printed name and title

Sworn to before me and signed in my presence.

Date:

Judge's signature

City and state:

Printed name and title

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I, MARCUS ANDRE MORGAN, being duly sworn, depose and state as follows:

**I. INTRODUCTION AND SUMMARY OF PROBABLE CAUSE**

1. I make this affidavit in support of a criminal complaint charging JAMES F. HITSELBERGER (HITSELBERGER), DOB 12/7/56, with violating 18 U.S.C. § 793(e). As set forth in greater detail below, a joint investigation by the Federal Bureau of Investigation (FBI) and the Naval Criminal Investigative Service (NCIS) has revealed probable cause that, on April 11, 2012, HITSELBERGER, while serving as a contract linguist at the Naval Support Activity – Bahrain (NSA Bahrain) and having received extensive training in the proper handling of classified materials, unlawfully retained national defense information – to wit, two classified reports that contained, among other things, current and sensitive information about the activities of U.S. armed forces in the region.

**II. AGENT BACKGROUND**

2. I am a Special Agent with the FBI, United States Department of Justice. Prior to joining the FBI, I served as a commissioned officer in the U.S. Army for almost six years, and then I worked as a Cleared Department of Defense contractor for five years. I have been employed by the FBI as a Special Agent for one year and eleven months, during which time I have been assigned to the Washington Field Office (WFO) for the past eighteen months. During my tenure at WFO, I have been assigned to one of the Counterespionage squads. As a Special Agent assigned to a Counterespionage squad, my duties include investigating allegations related to the unauthorized handling and disclosure of classified United States information. I have completed FBI training in the proper handling of classified information, and have been involved in the execution of search warrants and seizing evidence from residences and other locations.

3. This affidavit is based on my personal knowledge, my review of records and other materials obtained during the course of this investigation, including interview reports, as well as information provided to me by other government personnel with knowledge related to this investigation, both with the FBI and NCIS, which are working jointly on this investigation. I believe the information received from others to be truthful and reliable to the best of my knowledge. Where I have reported statements made by others, or from documents that I have reviewed, those statements are reported in substance and in part, unless otherwise indicated. Because this affidavit is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. Rather, I have set forth only those facts that I believe are sufficient to establish the necessary foundation for the complaint.

### **III. VIOLATIONS**

4. Section 793(e) of Title 18 of the United States Criminal Code makes it unlawful for anyone “having unauthorized possession of . . . any document [or] writing . . . relating to the national defense, . . . [to] willfully retain[] the same and fail[] to deliver it to the officer or employee of the United States entitled to receive it.” A person convicted under this section can be subjected to a fine or imprisonment of up to ten years, or both.

5. This investigation involves the misuse of classified information. I know from my training and experience, that classified information is defined by Executive Order No. 13526 (December 29, 2009).

a. Classified information consists of information in any form that (1) is owned by, produced by or for, or under the control of the United States government; (2) falls within one or more of the categories set forth in section 1.5 of the order (including intelligence sources and

methods, cryptology, military plans, and vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security); and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected or result in damage to the national security that the original classification authority can identify or describe.

b. Under the executive order, the designation “Confidential” shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause damage to national security. The designation “Secret” shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. The designation “Top Secret” shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

#### **IV. FACTS ESTABLISHING PROBABLE CAUSE**

6. HITSELBERGER attended Georgetown University circa 1980, studying Arabic and history. He subsequently attended graduate school at the University of Texas at Austin in the early 1990’s, studied politics and government and was working on an open ended Ph.D. in an unknown subject. From October 2004 to February 2007, HITSELBERGER worked as a contract linguist for Titan Corporation (Titan), a subsidiary of L3 Communications and served in several forward operating locations including Fallujah, Al Asad Airbase, Camp Ramadi, and Camp Victory, Iraq. During these deployments he was responsible for translating at various checkpoints and worked intimately with the force protection assets at these locations. From February 2007 until June 2011, HITSELBERGER was self-employed in property rental and renovation in Michigan. In June 2011, Global Linguist Solutions, LLC (GLS) offered him a job

as a linguist.

7. While working for Titan, HITSELBERGER received a SECRET level security clearance and was trained in the proper storage and handling of classified information. During his time in Iraq with Titan, there were two incidents in which HITSELBERGER was observed working with or taking sensitive but unclassified documents outside his approved work area. In both instances, military officials admonished him to handle official records only in approved spaces.

8. In June 2011, HITSELBERGER underwent Counterintelligence Screening at the GLS Security Office located in Herndon, VA. During this screening period, HITSELBERGER underwent security screening, security briefings, and training. In particular, HITSELBERGER underwent Initial Security Awareness Training. This training covered the following subjects: Initial Security, Operations Security/Communications Security, and Defensive Travel. The training explained the types of security clearances and his responsibilities related to having a security clearance. Specifically, HITSELBERGER received training on proper handling, storage, reproduction, and disposition of classified and sensitive material. The training provided an example of classified documents with classification markings located at the top and bottom of the document. HITSELBERGER also received training on the labeling of classified documents and the definitions of the three principal categories of classified information: TOP SECRET, SECRET and CONFIDENTIAL. In particular, HITSELBERGER was instructed that the classification TOP SECRET applied to information that, if lost or compromised, would cause exceptionally grave damage to the security of the United States; that the classification SECRET applied to information that, if lost or compromised, would cause serious damage to the security of the United States; and that the classification CONFIDENTIAL applied to information that, if

lost or compromised, would cause damage to the security of the United States. HITSELBERGER further received GLS training about where and how classified information could be discussed. This included the requirement that classified information must be discussed in an area authorized for specified classified discussions. In particular, he was instructed that classified information “[m]ust be under the control of an authorized person **OR** stored in a locked security container, vault, secure room, or secure area.” On June 30, 2011, HITSELBERGER signed an acknowledgment that he received the GLS training, and he signed an acknowledgement that “I also understand I could be subject to action under the espionage statutes of Federal Law with respect to my failure to handle or deliberate mishandling of classified information.” On August 27, 2011, he signed a Non-Disclosure Agreement in which, among other things, he acknowledged that “I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation.” HITSELBERGER received an interim SECRET level security clearance, which became permanent in January 2012. HITSELBERGER never received any authority to carry, or “courier” classified information from one secure location to another.

9. GLS deployed HITSELBERGER to Naval Support Activity Bahrain in September 2011 in support of the Joint Special Operations Task Force-Gulf Cooperation Council (JSOTF-GCC). JSOTF-GCC includes Naval Special Warfare Unit Three (NSWU-3), which is located in Bahrain and conducts such missions as unconventional warfare, direct action, combating terrorism, and special reconnaissance. NSWU-3’s proven ability to operate across the spectrum of conflict and in operations other than war in a controlled manner offers decision makers immediate and virtually unlimited options in the face of rapidly changing crises around the

world. Multiple forces relied on HITSELBERGER'S expertise in the Arabic language and sent raw data to him regularly for translation. Through this data, HITSELBERGER obtained intimate knowledge of sensitive source operations, including true names and addresses of sources.

10. Upon his arrival in Bahrain, HITSELBERGER underwent additional security training. On September 26, 2011, he received a certificate of completion for the Information Assurance Awareness course. During this course, HITSELBERGER again received training on the various types of classified information. He also was instructed that a security violation occurs whenever a cleared individual, "Remov[es] classified information in order to work on it at home" or "Tak[es] classified information home, ostensibly to work on it at home . . . ."

11. During Fall of 2011, one of HITSELBERGER'S supervisors, who was assigned to the JSOTF-GCC, observed and overheard HITSELBERGER discussing SECRET/NOFORN HUMINT classified information at the NSA-Bahrain commissary. Such information is classified at the SECRET level, it cannot be shared with foreign nationals (NOFORN), and it derives from human assets (HUMINT). The discussion was in public in an unauthorized area not specified for classified discussions. During this incident, HITSELBERGER talked loudly about the document he had just translated, which he thought was interesting. The supervisor told HITSELBERGER to stop, but HITSELBERGER laughed at him and began talking about it again. The supervisor explained to HITSELBERGER that he could not talk about this type of information out of the office because it was highly sensitive and classified information. This incident was contrary to GLS pre-deployment training HITSELBERGER had received in June 2011 concerning discussions of classified information in areas not cleared for classified discussions and the supplemental training he received upon his deployment to NSA-Bahrain.

12. On April 11, 2012, at approximately 11:15 a.m., HITSELBERGER signed into his

Secret Internet Protocol Router Network (SIPRnet) account, which is located on a secure, SECRET level computer system, and began by checking his email at a computer workstation within the JSOTF office space. This space is a Restricted Access Area (RAA). During his computer activity, HITSELBERGER was observed by two supervisors viewing JSOTF Situation Reports (SITREPs), which were classified SECRET. HITSELBERGER was then observed printing multiple pages of the SECRET SITREP documents from a SECRET printer. One of HITSELBERGER'S supervisors became concerned that HITSELBERGER, a translator, was reviewing classified SITREPS which contained sensitive troop information and intelligence analysis. HITSELBERGER was then observed taking the classified documents from the printer, folding them, and placing them into an Arabic-English Dictionary and subsequently placing the dictionary into his personal backpack. HITSELBERGER left the RAA and the building with SECRET documents in his backpack. As previously stated, HITSELBERGER did not possess the requisite authority, or courier authority, to remove classified documents from the RAA. After witnessing the event, and upon leaving the RAA, one of HITSELBERGER's supervisors and his commanding officer followed him in order to prevent the classified material from being compromised further. They stopped him in a public space outside the building that houses the RAA. They told HITSELBERGER they needed to see what was in his bag and asked him to produce the documents he had just printed. HITSELBERGER first took out only one classified document from inside the dictionary. When his supervisor asked what else he had, HITSELBERGER finally surrendered the second classified document from his backpack..

13. One of the documents was that day's JSOTF SITREP (SITREP 104). It has **SECRET//NOFORN** in red, bold type (all capitals) in the header and footer of each page. HITSELBERGER later said he took the report because it had a discussion of improvised

explosive devices (IEDs). That portion of the document is marked (S//NF). Elsewhere in the document, in portions marked (S), are the schedule for the monthly travel of a high-ranking commander at NSA-Bahrain and information about the locations of troop activities in the region over the previous twenty-four hours. The second document was a Navy Central Command (NAVCENT) Regional Analysis dated April 9, 2012. It bears the following header and footer on each page: **SECRET//REL TO USA, FVEY**.<sup>1</sup> On the third page are five bullet points, marked (S//REL), discussing gaps in U.S. intelligence concerning the situation in Bahrain, which, at the time, was volatile. Navy officials have reviewed both SITREP 104 and the April 9, 2012, NAVCENT Regional Analysis. The Navy officials have determined that both documents were properly classified and contained national defense information.

14. Based on the evidence that HITSSELBERGER had removed classified documents from the RAA, on April 11, 2012, NCIS Special Agents conducted a Command Authorized Search and Seizure of HITSSELBERGER'S living quarters in Bahrain. This authorization is granted by the person serving in a position of command who has control of the place or property where the person is situated or found and is done so in a neutral and detached manner akin to the process undertaken by a Federal Magistrate Judge in issuing a search warrant. The room was extremely cluttered and contained hundreds of newspapers, numerous books and storage containers. There was a bag full of customs forms used for mailing packages and numerous items containing Arabic writing and various types of computer and electronic components. Most significantly, a document appearing to be classified was discovered on the top of HITSSELBERGER'S desk. The top and bottom of the document had been manually clipped off, effectively removing the classification markings in the header and footer of the document, which

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<sup>1</sup> REL is an abbreviation for "releasable to." FVEY is an abbreviation for the "Five Eyes," which are the United States, Canada, Great Britain, Australia, and New Zealand.

concealed the overall classification of the document, which was later determined to be SECRET. The page of document in HITSELBERGER'S room still had the individual paragraph classification markings, which revealed the paragraphs of the page were classified at the CONFIDENTIAL level. Subsequent investigation revealed that the document in question was JSOTF SITREP 72 (SITREP 72) from March 8, 2012. HITSELBERGER had received the entire document as an attachment to e-mail sent to several persons on a distribution list. This SITREP is five pages in length and has **SECRET** in red in the headers and footers. Like SITREP 104, it contains highly sensitive information about the location of U.S. forces and their undisclosed activities in the region. A Navy Official has reviewed SITREP 72 and has confirmed that the information concerning troop locations and activities is properly classified and is national defense information.

15. On the evening of April 11, 2012, and the afternoon of April 12, 2012, NCIS agents conducted two voluntary non-custodial interviews of HITSELBERGER. For each interview, he was advised of and knowingly and voluntarily waived his *Miranda* rights. In both interviews, HITSELBERGER claimed not to know that the documents he printed were classified, notwithstanding their clear markings. He said he printed the NAVCENT Regional Analysis by mistake, and that his sole purpose was to take the materials to his quarters to read. At one point, HITSELBERGER denied having received training on classified materials, even though he had two such training sessions within the previous nine months. When asked about the document agents found in his room with the header and footer removed, he did not admit having taken it or stored it in his room. However, HITSELBERGER added that he cuts around paper because he does not like having extra paper, and then said he could not defend himself with respect to this document.

16. Based upon the incident, JSOFT-GCC requested HITSELBERGER be replaced and asked GLS to remove him from Bahrain. On April 12, 2012, HITSELBERGER left Bahrain and, during a scheduled 4.5 hour layover in Germany, abruptly changed his travel plans and left the airport. During his first days in Germany, HITSELBERGER was in contact with his employer GLS; however according to the GLS security officer, HITSELBERGER was "highly deceptive" regarding his location and intentions and would not correctly give GLS the information it needed to ensure HITSELBERGER was experiencing good health and welfare. In particular, he advised GLS that he felt a stroke coming on and therefore was refraining from traveling. Information from court authorized pen registers on HITSELBERGER'S e-mail accounts reveals that he has traveled from Germany to Sweden, Malta, Bulgaria, and Albania.

17. In his interviews with NCIS agents in Bahrain, HITSELBERGER told them, among other things, that he had established a collection of materials at the Archives of the Hoover Institute at Stanford University. The collection began with pamphlets and writings he acquired in Iran in 1978 immediately before the revolution. Open source information revealed that the collection is titled the "James F. Hitselberger Collection, 1977-2012." Agents visited the Hoover Archives and reviewed the collection. In an area open to the public, the agents found a classified document titled Bahrain Situation Update dated February 13, 2012. Like the document found in HITSELBERGER's room in Bahrain, this document, although it has individual paragraphs with classification markings, is missing the headers and footers. It is officially classified as **SECRET//REL ACGU.2** Like the NAVCENT Regional Analysis found in HITSELBERGER's backpack, it has a section that discusses gaps in U.S. intelligence with respect to the political situation in Bahrain. A Navy official has reviewed these portions of the

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2 "ACGU" means that the document is releasable to Australia, Canada, Great Britain, and the United States.

Bahrain Situation Update and has determined that these paragraphs are properly classified as **SECRET//REL TO USA, FVEY** and that they contain national defense information. A second document, containing a series of bullet points marked “**S//REL TO USA, MCFI3** and dating from HITSELBERGER’S time in Iraq, was also found in the portion of the collection accessible to the public. This document is missing a header and footer indicating its overall classification level.

18. In a secure, non-public area of the Archives, agents also discovered two other documents marked **SECRET**. These materials dated from HITSELBERGER’S time in Iraq with Titan. There was also correspondence between HITSELBERGER and the former Associate Archivist for Collection for the Hoover Archives, concerning one of the documents, a March 23, 2005, IIR. HITSELBERGER advised the former Associate Archivist that the document was classified and that its declassification date was March 23, 2015. HITSELBERGER nonetheless stated, “Regardless of the case, this material seems to warrant archival preservation. I will leave the matter up to you to determine when researchers can have access to these items, as I am fully confident that your institution balances national security concerns with the need of researchers for original source material.”

19. FBI agents recently interviewed the Deputy Archivist at the Hoover Institute. After the interview, she exchanged e-mails with HITSELBERGER on May 16 and 17, 2012. A court authorized search of HITSELBERGER’S e-mail account revealed that she told HITSELBERGER that “in light of the FBI investigation of your collection here at Hoover, we will no longer accept additions to the collection, as we don’t want to risk receiving more classified material.” He responded:

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3 MCFI is an abbreviation for Multinational Coalition Forces Iraq.

My apologies. There were classified materials? I am sure they brought unwanted excitement. Yes, there was indeed an incident in Bahrain. I was unable to locate my regular reading glasses that day over a month ago and I did not notice the 'secret' designation at the bottom. I was wearing a very narrowed rimmed pair of glasses which enabled me to read only a third of the page. The secret designation was in regular font size. I even brought the document to a sergeant's attention. He did not say anything about its classification till I was outside the building on base. He knew I had printed it out and put into my bag. When I saw NCIS, it informed me that documents of any classification were forbidden to take. Well, tht is news to me. Otherwise I wouldn't have printed anything during my time there.

This e-mail contains a number of falsehoods. The "secret designation" was not in regular font size. It was in all capital letters, in red, and bolded. Both of HITSELBERGER'S supervisors, who hold the rank of master sergeant, have given NCIS sworn statements, and neither states that HITSELBERGER brought either of the classified documents he took to them. Nor was it "news" to HITSELBERGER that he could not remove documents of any classification from the RAA.

## **XI. CONCLUSION**

20. In summary, based upon the above facts and information, I submit that there is probable cause to believe that HITSELBERGER has violated Title 18, Section 793(e) of the United States Code, by unlawfully removing and retaining classified information from a secure

location. Accordingly, I respectfully request that a criminal complaint be issued.

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Marcus Andre Morgan  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me on August \_\_\_\_\_, 2012

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ALAN KAY  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA