

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**FILED**

APR 23 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RAHINAH IBRAHIM

V.

Case No. C 06-00545 WHA

DEPARTMENT OF HOMELAND  
SECURITY, et al.

DECLARATION OF JAMES R. CLAPPER, DIRECTOR OF NATIONAL INTELLIGENCE

I, James R. Clapper, declare as follows:

**(U) Introduction**

1. (U) I am the Director of National Intelligence (DNI) of the United States. I have held this position since August 2010. Prior to becoming the Director of National Intelligence, I served for over three years in two Administrations as the Under Secretary of Defense for Intelligence, where I served as the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense on intelligence, counterintelligence, and security matters for the Department. In this capacity, I was also dual-hatted as the Director of Defense Intelligence for the Office of the

Director of National Intelligence (ODNI). Previously, I served as lieutenant general in the U.S. Air Force, as Director of the Defense Intelligence Agency, and as the first civilian director of the National Imagery and Mapping Agency, transforming it into the National Geospatial-Intelligence Agency.

2. (U) In the course of my official duties, I have been advised of this lawsuit and the allegations at issue in the plaintiff's Second Amended Complaint against the Department of Homeland Security, the Federal Bureau of Investigation, the Terrorist Screening Center, and the National Counterterrorism Center. The statements made in this declaration are based on my personal knowledge, as well as on information provided to me in my official capacity as DNI, and on my personal evaluation of that information. I have also reviewed and personally considered the information contained in the three supporting classified declarations submitted in this matter.

3. (U) The purpose of this declaration is to formally assert, in my capacity as DNI and head of the U.S. Intelligence Community, the state secrets privilege as well as a statutory privilege under the National Security Act of 1947, as amended, in order to protect the intelligence information, sources, and methods that are implicated in this case. Although I am not named as a defendant in this case, nor is the ODNI, the National Counterterrorism Center, a component of the ODNI, is a named defendant in this case, and, in addition, the plaintiff has sought discovery of national intelligence information. This intelligence information is covered by my privilege assertions, as the disclosure of this information would cause serious damage to the national security of the United States. The information should therefore be excluded from use in this case.

**(U) Background on the Director of National Intelligence**

4. (U) Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as head of the United States Intelligence Community and as the principal advisor to the President and the National Security Council for intelligence matters related to national security. *See* 50 U.S.C. § 403(b)(1), (2).

5. (U) The United States Intelligence Community includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of 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 the head of the department or agency concerned, as an element of the Intelligence Community. 50 U.S.C. § 401a(4).

6. (U) The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national

intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is charged with establishing the objectives of; determining the requirements and priorities for; and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. 50 U.S.C. § 403-1(f)(1)(A)(i) and (ii).

7. (U) In addition, the National Security Act of 1947, as amended, requires that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive Orders, or other Presidential directives and for access to and dissemination of intelligence. 50 U.S.C. § 403-1(i)(2)(A), (B).

8. (U) By virtue of my position as DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entity of the United States. Pursuant to Executive Order No. 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), *reprinted in* 50 U.S.C.A. 435 note at 215 (2010) ("EO 13526"), the President has authorized me to exercise original TOP SECRET classification authority.

#### **(U) The National Counterterrorism Center**

9. (U) In addition to serving as head of the U.S. Intelligence Community, I also serve as the head of ODNI. *See* 50 U.S.C. § 403-3. NCTC was established by Executive Order 13354

(August 27, 2004, 60 FR 53584, Sept. 1, 2004) and was made an element of the ODNI in the Intelligence Reform and Terrorism Prevention Act of 2004. *See* 50 U.S.C. § 404o. Among its principal missions, NCTC serves as the primary organization within the United States Government for the analysis and integration of all information related to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism; ensures that appropriate agencies have access to and receive intelligence needed to accomplish their assigned activities; and serves as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support. 50 U.S.C. § 404o(d). NCTC has broad authority to access all terrorism-related information that may be collected by other Federal agencies, both within and without the Intelligence Community. *See* Executive Order 13388 (Oct. 25, 2005). The Director of NCTC reports to the DNI on all matters related to (1) NCTC budget and programs; (2) the activities of NCTC's Directorate of Intelligence; and (3) the conduct of intelligence operations implemented by other elements of the Intelligence Community. 50 U.S.C. § 404o(c).

10. (U) Pursuant to its statutory mission, NCTC maintains the Terrorist Identities Datamart Environment (TIDE) as the central and shared knowledge bank on known and suspected terrorists. TIDE includes, to the extent permitted by law, all information the U.S. Government possesses related to the identities of individuals known or appropriately suspected to be or have been engaged in activities constituting, in preparation for, in aid of, or related to terrorism, with the exception of purely domestic terrorism information. TIDE includes a great deal of intelligence information obtained through the activities of the Intelligence Community, often implicating the most sensitive sources and methods of intelligence gathering. Based on the

underlying classification of its contents, the overall classification of TIDE, and the highest level to which its contents may be classified, is TOP SECRET//SCI. Under Executive Order 13526, information is classified TOP SECRET if unauthorized disclosure of the information reasonably could be expected to cause exceptionally grave damage to the national security of the United States. Information is classified SECRET if unauthorized disclosure reasonably could be expected to cause serious damage to the national security of the United States.

**(U) Assertion of the State Secrets Privilege**

11. (U) After careful and actual personal consideration of the matter, based upon my own knowledge and information obtained in the course of my official duties, including the information contained in the three supporting classified declarations filed herewith, I have determined that the disclosure of certain information, as set forth in this declaration and in greater detail in the classified declarations filed *in camera, ex parte*, would cause serious damage to the national security of the United States and that this information must therefore be protected from disclosure in this case. Thus, as to this information, I formally assert the state secrets privilege.

12. (U) I also invoke and assert a statutory privilege held by the Director of National Intelligence under the National Security Act of 1947, as amended, to "protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 403-1(i)(1). My assertion of this statutory privilege is coextensive with my state secrets privilege assertion.

**(U) Description of Information Subject to Claims of Privilege and Harm from Disclosure**

13. (U) My assertion of the state secrets and statutory privileges in this case precludes defendants or any other agency from making any response, including through document production or deposition testimony, that would serve to disclose classified information regarding plaintiff or any other individual; the sources, methods, and means by which classified information is collected; and information which would confirm or deny whether information regarding plaintiff or any other individual is in NCTC's TIDE database.

14. (U) As a matter of policy, the United States can generally neither confirm nor deny allegations concerning intelligence activities, sources, methods, relationships, or targets. If the United States confirms that it is conducting a particular intelligence activity, that it is gathering intelligence from a particular source, or that it has gathered information on a particular person, such activities would be compromised and foreign adversaries and terrorist organizations could use that information to avoid detection. Even confirming that a certain intelligence activity or relationship does not exist, either in general or with respect to specific targets or channels, would harm national security because alerting our adversaries to channels or individuals that are not under surveillance could likewise help them avoid detection. In addition, denying untrue allegations is an untenable practice. If the U.S. Government, for example, were to confirm in certain cases that specific intelligence activities, relationships, or targets do not exist, but then refuse to comment (as it would have to) in a case involving an actual intelligence activity, relationship, or target, a person could easily deduce by comparing such responses that the latter case involved an actual intelligence activity, relationship, or target. Thus, the United States must

refuse to confirm or deny intelligence activities, relationships or targets, regardless of whether or not they exist.

15. (U) NCTC's TIDE database of known and suspected terrorists remains an effective tool in the U.S. Government's counterterrorism efforts in part because its contents, and the sources, methods and underlying information that form the basis for its contents, are not disclosed outside intelligence and law enforcement channels. To confirm or deny that TIDE contains information regarding plaintiff or any person, or how any such information was gathered and from whom, could reasonably be expected to cause serious damage to national security, and I therefore assert the state secrets and statutory privileges to prevent the defendants from having to make any such statement or produce any potentially responsive documents that would implicate the contents of TIDE, or how its contents are derived.

**(U) Support for Attorney General's Assertion of the State Secrets Privilege**

16. (U) By this declaration, I also state my support for the Attorney General's assertion of the state secrets privilege as to whether plaintiff was or was not the subject of an FBI investigation or intelligence operation; information that could reveal the predicate for an FBI investigation; and information that could reveal particular sources and methods.

17. (U) The Intelligence Community protects information as to whether an individual is or has been the subject of a domestic or international counterterrorism investigation because disclosing that fact would compromise ongoing investigative and national security interests. If a suspect is made aware that he or she is or was the subject of a counterterrorism investigation, the suspect would naturally tend to alter his or her behavior, taking new precautions against



surveillance and changing the magnitude, nature, and/or timing of any terrorism related activity in which he or she is engaged. These modifications would require renewed effort, pull national security resources from other work, and potentially prevent us from learning who the suspect's confederates are. Conversely, disclosure that an individual is not, or is no longer, the subject of a national security investigation could also cause substantial harm to counterterrorism investigative and intelligence gathering interests. If an individual desires to commit a terrorist act, informing him that he or she is not, or is no longer, under investigation would allow him or her to act with a greatly diminished fear of detection and could even encourage the individual to commit the terrorist act.

18. (U) Even if the subject of an investigation is ultimately found to be a law-abiding citizen with no intention to engage in terrorist activity, disclosure of the fact of an investigation could implicate intelligence sources, methods, and information. Disclosing an investigation would reveal information as to why that individual had been investigated. Just the fact of an investigation could prompt terrorists to review the relationships they had to the subject and result in their taking measures to avoid detection. As above, whenever terrorists cease to utilize a system that has been compromised, the Intelligence Community must divert resources to determine and infiltrate the new system, with a resultant period in which counterterrorism capabilities are diminished and national security imperiled.

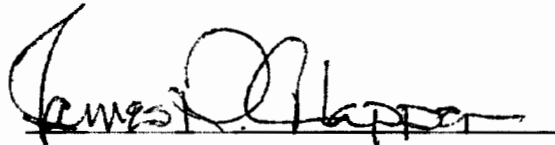
19. (U) Thus, to protect intelligence sources and methods and further the national security, I support the Attorney General's assertion of the state secrets privilege. Disclosure of an individual's status as a subject of an FBI counterterrorism investigation, whether affirmative or negative, would implicate the intelligence sources and methods and risk the harms described above.

**(U) Conclusion**

20. (U) In sum, I formally invoke the state secrets privilege and the statutory privilege under the National Security Act of 1947, as amended, to preclude defendants from making any response, including though document production and deposition testimony, that would serve to disclose classified information, or the sources and methods by which such information was derived. The information covered by my privilege assertion includes the information more fully described in the three classified declarations filed herewith. Information of the type discussed in these declarations cannot be disclosed without causing serious damage to the national security of the United States. I also support the Attorney General's assertion of the state secrets privilege as to plaintiff's requests for any FBI investigative files pertaining to her.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of March, 2013.

A handwritten signature in black ink, appearing to read "James R. Clapper", written over a horizontal line.

**JAMES R. CLAPPER  
DIRECTOR OF NATIONAL INTELLIGENCE**