

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS)
CAROLYN JEWEL and ERIK KNUTZEN)
on Behalf of Themselves and All Others)
Similarly Situated,)

Plaintiffs,)

v.)

AT&T CORP., AT&T INC. and)
DOES 1-20, inclusive,)

Defendants.)

Case No. C-06-0672-VRW

**DECLARATION OF
JOHN D. NEGROPONTE,
DIRECTOR OF NATIONAL
INTELLIGENCE**

I, John D. Negroponte, declare as follows:

INTRODUCTION

1. I am the Director of National Intelligence (DNI) of the United States. I have held this position since April 21, 2005. From June 28, 2004, until appointed to be DNI, I served as United States Ambassador to Iraq. From September 18, 2001, until my appointment in Iraq, I served as the United States Permanent Representative to the United Nations. I have also served as Ambassador to Honduras (1981-1985), Mexico (1989-1993), the Philippines (1993-1996), and as Deputy Assistant to the President for National Security Affairs (1987-1989).

2. In the course of my official duties, I have been advised of this lawsuit and the allegations at issue in this case. The statements made herein 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. In personally considering this matter, I have executed a separate classified declaration dated May 12, 2006, and filed *in camera* and *ex parte* in this case. Moreover, I have read and personally considered the information contained in the *In Camera, Ex Parte* Declaration of Lt. Gen. Keith B. Alexander filed in this case. General Alexander is the

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1 Director of the National Security Agency (“NSA”), and is responsible for directing the NSA,
2 overseeing the operations undertaken to carry out its mission, and by specific charge from the
3 President and the DNI, protecting NSA activities and intelligence sources and methods.

4 3. The purpose of this declaration is to formally assert, in my capacity as DNI and
5 head of the United States Intelligence Community, the military and state secrets privilege
6 (hereafter “state secrets privilege”), as well as a statutory privilege under the National Security
7 Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence information, sources and
8 methods that are implicated by the allegations in this case. Disclosure of the information
9 covered by these privilege assertions reasonably could be expected to cause exceptionally grave
10 damage to the national security of the United States and, therefore, should be excluded from any
11 use in this case. In addition, I concur with General Alexander’s conclusion that the risk is great
12 that further litigation will risk the disclosure of information harmful to the national security of
13 the United States and, accordingly, this case should be dismissed. *See* Declaration of Lt. Gen.
14 Keith B. Alexander, Director, National Security Agency.

15 **BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

16 4. The position of Director of National Intelligence was created by Congress in the
17 Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and
18 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of the Title
19 I of the National Security Act of 1947). Subject to the authority, direction, and control of the
20 President, the DNI serves as the head of the U.S. Intelligence Community and as the principal
21 advisor to the President, the National Security Council, and the Homeland Security Council, for
22 intelligence-related matters related to national security. *See* 50 U.S.C. § 403(b)(1), (2).

23 5. The “United States Intelligence Community” includes the Office of the Director
24 of National Intelligence; the Central Intelligence Agency; the National Security Agency; the
25 Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National
26 Reconnaissance Office; other offices within the Department of Defense for the collection of

1 specialized national intelligence through reconnaissance programs; the intelligence elements of
2 the military services, the Federal Bureau of Investigation, the Department of Treasury, the
3 Department of Energy, Drug Enforcement Administration, and the Coast Guard; the Bureau of
4 Intelligence and Research of the Department of State; the elements of the Department of
5 Homeland Security concerned with the analysis of intelligence information; and such other
6 elements of any other department or agency as may be designated by the President, or jointly
7 designated by the DNI and heads of the department or agency concerned, as an element of the
8 Intelligence Community. *See* 50 U.S.C. § 401a(4).

9 6. The responsibilities and authorities of the DNI are set forth in the National
10 Security Act, as amended. *See* 50 U.S.C. § 403-1. These responsibilities include ensuring that
11 national intelligence is provided to the President, the heads of the departments and agencies of
12 the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders,
13 and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1).
14 The DNI is also charged with establishing the objectives of, determining the requirements and
15 priorities for, and managing and directing the tasking, collection, analysis, production, and
16 dissemination of national intelligence by elements of the Intelligence Community. *Id.* § 403-
17 1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and determining, based on
18 proposals submitted by heads of agencies and departments within the Intelligence Community,
19 an annual consolidated budget for the National Intelligence Program for presentation to the
20 President, and for ensuring the effective execution of the annual budget for intelligence and
21 intelligence-related activities, and for managing and allotting appropriations for the National
22 Intelligence Program. *Id.* § 403-1(c)(1)-(5).

23 7. In addition, the National Security Act of 1947, as amended, provides that “The
24 Director of National Intelligence shall protect intelligence sources and methods from
25 unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
26 establishes and implements guidelines for the Intelligence Community for the classification of

1 information under applicable law, Executive Orders, or other Presidential directives and access
2 and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
3 for the establishment of uniform standards and procedures for the grant of access to Sensitive
4 Compartmented Information (“SCI”) to any officer or employee of any agency or department of
5 the United States, and for ensuring consistent implementation of those standards throughout such
6 departments and agencies. *Id.* § 403-1(j)(1), (2).

7 8. By virtue of my position as the DNI, and unless otherwise directed by the
8 President, I have access to all intelligence related to the national security that is collected by any
9 department, agency, or other entity of the United States. Pursuant to Executive Order No.
10 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003),
11 reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me
12 to exercise original TOP SECRET classification authority. My classified declaration, as well as
13 the classified declaration of General Alexander on which I relied in this case, are properly
14 classified under § 1.3 of Executive Order 12958, as amended, because the public disclosure of
15 the information contained in those declarations could reasonably be expected to cause serious
16 damage to the foreign policy and national security of the United States.

17 **ASSERTION OF THE STATE SECRETS PRIVILEGE**

18 9. After careful and actual personal consideration of the matter, I have determined
19 that the disclosure of certain information implicated by Plaintiffs’ claims—as set forth here and
20 described in more detail in my classified declaration and in the classified declaration of General
21 Alexander—could reasonably be expected to cause exceptionally grave damage to the national
22 security of the United States and, thus, must be protected from disclosure and excluded from this
23 case. Thus, as to this information, I formally invoke and assert the state secrets privilege. In
24 addition, it is my judgment that any attempt to proceed in the case will substantially risk the
25 disclosure of the privileged information described briefly herein, and in more detail in the
26 classified declarations, and will cause exceptionally grave damage to the national security of the

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1 United States.

2 10. Through this declaration, I also invoke and assert a statutory privilege held by the
3 DNI under the National Security Act to protect intelligence sources and methods implicated by
4 this case. *See* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory privilege for intelligence
5 information and sources and methods is coextensive with my state secrets privilege assertion.

6 **INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE**

7 11. In an effort to counter the al Qaeda threat, the President of United States
8 authorized the NSA to utilize its SIGINT capabilities to collect certain “one-end foreign”
9 communications where one party is associated with the al Qaeda terrorist organization for the
10 purpose of detecting and preventing another terrorist attack on the United States. This activity is
11 known as the Terrorist Surveillance Program (“TSP”). To discuss this activity in any greater
12 detail, however, would disclose classified intelligence information and reveal intelligence
13 sources and methods, which would enable adversaries of the United States to avoid detection by
14 the U.S. Intelligence Community and/or take measures to defeat or neutralize U.S. intelligence
15 collection, posing a serious threat of damage to the United States’ national security interests.
16 Thus, any further elaboration on the public record concerning the TSP would reveal information
17 that could cause the very harms my assertion of the state secrets privilege is intended to prevent.
18 The classified declaration of General Alexander that I considered in making this privilege
19 assertion, as well as my own separate classified declaration, provide a more detailed explanation
20 of the information at issue and the harms to national security that would result from its
21 disclosure.

22 12. Plaintiffs also make allegations regarding other purported activities of the NSA,
23 including allegations about NSA’s purported involvement with AT&T. The United States can
24 neither confirm nor deny allegations concerning intelligence activities, sources, methods,
25 relationships, or targets. For example, disclosure of those who are targeted by such activities
26 would compromise the collection of intelligence information just as disclosure of those who are

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1 not targeted would reveal to adversaries that certain communications channels are secure or,
2 more broadly, would tend to reveal the methods being used to conduct surveillance. The only
3 recourse for the Intelligence Community and, in this case, for the NSA, is to neither confirm nor
4 deny these sorts of allegations, regardless of whether they are true or false. To say otherwise
5 when challenged in litigation would result in routine exposure of intelligence information,
6 sources, and methods and would severely undermine surveillance activities in general. Thus, as
7 with the other categories of information discussed in this declaration, any further elaboration on
8 the public record concerning these matters would reveal information that could cause the very
9 harms my assertion of the state secrets privilege is intended to prevent. The classified
10 declaration of General Alexander that I considered in making this privilege assertion, as well as
11 my own separate classified declaration, provide a more detailed explanation of the information at
12 issue, the reasons why it is implicated by Plaintiffs' claims, and the harms to national security
13 that would result from its disclosure.

14 CONCLUSION

15 13. In sum, I formally invoke and assert the state secrets privilege, as well as a
16 statutory privilege under the National Security Act, to prevent the disclosure of the information
17 detailed in the two classified declarations that are available for the Court's *in camera* and *ex*
18 *parte* review. Moreover, because proceedings in this case risk disclosure of privileged and
19 classified intelligence-related information, I join with General Alexander in respectfully
20 requesting that the Court dismiss this case to stem the harms to the national security of the
21 United States that will occur if it is litigated.

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

DATE: 5/12/2006



JOHN D. NEGROPONTE
Director of National Intelligence

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