

~~SECRET//NOFORN~~

Intelligence from 1986 until 1989, and as Assistant to the President and Deputy National Security Adviser from 1989 until 1991.

2. (U) Through the exercise of my official duties, I have been advised of this litigation and have reviewed the complaint in this case. I make the following statements based upon my personal knowledge and on information made available to me in my official capacity.

3. (U) The purpose of this declaration is to formally assert the military and state secrets privilege in order to protect highly sensitive information of DoD and the U.S. armed forces implicated by the allegations in this case. As summarized in this declaration, public disclosure of the information covered by my privilege assertion reasonably could be expected to cause harm, up to and including exceptionally grave harm, to the national security of the United States.

4. (U) As the Secretary of Defense and pursuant to Executive Order 13256, I hold original classification authority up to the TOP SECRET level. This means that I have been authorized by the President to make original classification decisions.

5. (U) Each paragraph of this declaration has been portion-marked with the level of classification and control markings necessary for the full protection of the information in that paragraph. The marking "S" denotes information classified at the SECRET level because I have determined that its unauthorized disclosure reasonably could be expected to cause serious damage to the national security. NOFORN, or "NF" stands for "No Foreign Dissemination" and means that the information can be disseminated to U.S.

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

persons only and cannot be disseminated to foreign nationals. The overall classification of this declaration reflects the highest classification level of any individual paragraph. Consistent with the standards established in Executive Order 13526 and pursuant to my authority thereunder, I have determined that this declaration is properly classified SECRET//NOFORN and must be transmitted and stored in compliance with the standards for information so classified. The delivery and storage of this declaration will be coordinated with a Department of Justice Security Officer.

6. (U) This declaration must be presented to the Court *in camera* because it contains classified information that cannot be publicly disclosed. My duty pursuant to Executive Order 13526 to protect classified information includes restricting it from being disseminated to persons who have not received a favorable determination of eligibility for access to classified information, have not signed a non-disclosure agreement, and who have no need to know the information. This declaration must be presented to the Court *ex parte* because the plaintiff's attorneys have not been determined eligible for access to classified information, nor assessed as having a need to know the classified national security information in this case. I have determined, based on my knowledge of the facts and circumstances of this case, that the plaintiff's attorneys have no need to know the information contained in this declaration.

7. (U) Plaintiff alleges that the Department of Defense has conducted military strikes in Yemen, including strikes that have targeted plaintiff's son, Anwar al-Aulaqi (Complaint ¶¶19, 20), and that DoD continues to target Anwar al-Aulaqi for lethal force

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

in Yemen "without regard to whether, at the time lethal force will be used, [Anwar al-Aulaqi] presents a concrete, specific, and imminent threat to life" and also without regard to whether there are "means other than lethal force that could reasonably be employed to neutralize any such threat" (Complaint ¶¶23, 27, 28, 29). Plaintiff asks the Court to order the disclosure of the process and secret criteria allegedly utilized by DoD to decide whether to authorize strikes against a U.S. citizen, including Anwar al-Aulaqi (Complaint, Prayer for Relief at d). Plaintiff also asks the Court to enjoin defendants from intentionally killing Anwar al-Aulaqi unless he presents a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that reasonably could be employed to neutralize that threat (Complaint, Prayer for Relief at d).

8. (U) The allegations of this case put at issue sensitive intelligence information about al Qaida in the Arabian Peninsula ("AQAP"), disclosure of which would cause exceptionally grave harm to national security. The allegations of this case also put at issue the disclosure of sensitive military information concerning whether or not U.S. armed forces are engaged in particular operations in Yemen and the circumstances of any such operations. Without confirming or denying any allegation in this case, information concerning whether or not U.S. armed forces are planning to undertake military actions in a foreign country, against particular targets, under what circumstances, for what reasons, and pursuant to what procedures or criteria, constitutes highly sensitive and classified

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

military information that cannot be disclosed without causing serious harm to the national security of the United States.

9. (S) In sum, a variety of classified intelligence in the possession of DoD reveals that AQAP, based in Yemen, is today one of the most active and dangerous nodes of al Qaida in the planning and execution of terrorist attacks against the United States. Anwar al-Aulaqi, believed to be located in Yemen, is the external operations director of AQAP – *i.e.*, the senior leader of AQAP responsible for planning and organizing acts of terrorism outside the borders of Yemen, including, for example, the attempted bombing on December 25, 2009 of Northwest Flight 253 as it was landing in Detroit.

10. (S) Given the current terrorist threat that AQAP and Anwar al-Aulaqi represent to our national security, I consider it imperative that our efforts to capture or kill Anwar al-Aulaqi not be compromised by disclosure of certain highly sensitive information. Public disclosure of the classified intelligence that supports our assessment of AQAP and Anwar al-Aulaqi, our current strategy and ongoing efforts against AQAP, or [REDACTED] [REDACTED], would in fact compromise those efforts.

11. (S) As set forth further below, the allegations in this case directly implicate and would risk or require the disclosure of several highly classified facts concerning [REDACTED]

* (S) [REDACTED]
[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

[REDACTED]

* (S) [REDACTED]

* (S) [REDACTED]

* (S) [REDACTED]

* (S) [REDACTED]

I. (U) ASSERTION OF THE STATE SECRETS PRIVILEGE IN THIS CASE

12. (U) Accordingly, as set forth below and described further in the following paragraph, I am asserting the military and state secrets privilege over information that falls within the following categories and that may be implicated by the allegations in this lawsuit:

- A. (U) Intelligence information DoD possesses concerning AQAP and Anwar al-Aulaqi, including intelligence concerning the threat AQAP or Anwar al-Aulaqi pose to national security, and

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

the sources, methods, and analytic processes on which any such intelligence information is based;

- B. (U) Information concerning possible military operations in Yemen, if any, and including criteria or procedures DoD may utilize in connection with such military operations; and
- C. (U) Information concerning relations between the United States and the Government of Yemen, including with respect to security, military, or intelligence cooperation, and that government's counterterrorism efforts.

13. ~~(S)~~ The foregoing categories include the following specific classified information:

- A. (S) [REDACTED];
- B. (S) [REDACTED];
- C. (S) [REDACTED];
- D. (S) [REDACTED].

A. (U) Intelligence Information Related to AQAP and Anwar Al-Aulaqi.

14. ~~(S//NF)~~ First, I am asserting privilege over intelligence information DoD possesses concerning AQAP and Anwar al-Aulaqi, including intelligence concerning the threat AQAP or Anwar al-Aulaqi pose to national security, and the sources, methods, and

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

analytic processes on which any such intelligence information is based.¹ The allegations in this case put at issue the nature and imminence of the threat posed by Anwar al-Aulaqi, and understanding this threat would risk or require the disclosure of highly classified intelligence information related to AQAP and Anwar al-Aulaqi. Intelligence information available to me as Secretary of Defense demonstrates that AQAP is an active and dangerous regional node of al Qaida and has conducted and continues to plot terrorist attacks against the United States, its coalition partners, and allies. Intelligence also demonstrates that Anwar al-Aulaqi is one of the leaders of AQAP, specifically, that he is its external operations chief. As such, he is responsible for encouraging, planning, and directing AQAP's terrorist attacks against the United States. Intelligence indicates that Anwar al-Aulaqi continues to plan terrorist attacks against the United States. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 (S) Through a classified, *in camera*, *ex parte* declaration, the Director of National Intelligence (DNI), James R. Clapper, has also formally asserted the state secrets privilege as well as a statutory privilege over intelligence information about al Qaida, AQAP and Anwar al-Aulaqi (hereinafter "Clapper Declaration"). This Court is referred to the classified Clapper Declaration for additional, specific information about these groups and this individual, including detailed information concerning the imminent and grave threat they pose to the national security of the United States. I concur with Director Clapper's assessment of the need to assert privilege with respect to this information and that exceptionally grave harm to national security would result if it were disclosed.

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

B. ~~(S)~~ Information Related to [REDACTED]
[REDACTED]

i. ~~(S)~~ Information Related To [REDACTED]
[REDACTED]

15. ~~(S)~~ I am next asserting privilege over information related to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, any such information is
subject to my state secrets privilege assertion and should be protected from disclosure by
this Court.

16. (S) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

17. (S) [REDACTED]

[REDACTED]

ii. (S) Information Regarding [REDACTED]

18. (S) I am next asserting privilege over information related to [REDACTED]

[REDACTED]

[REDACTED] Accordingly, any such information is subject to my state secrets privilege assertion and should be protected from disclosure by this Court.

19. (S) [REDACTED]

[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

[REDACTED]

20. (S) [REDACTED]

[REDACTED]

21. (S) [REDACTED]

[REDACTED]

22. (S) [REDACTED]

[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

[REDACTED]

[REDACTED]

iii. ~~(S)~~ Information Regarding [REDACTED]
[REDACTED]

23. ~~(S)~~ I am next asserting privilege over information related to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. (S) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. ~~(S)~~ Information Related to [REDACTED]
[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

25. ~~(S)~~ I am next asserting privilege over information related to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Accordingly, any such information is subject to my state secrets privilege assertion and should be protected from disclosure by this Court.

26. (S) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

II. (U) HARM TO NATIONAL SECURITY THAT REASONABLY COULD RESULT FROM DISCLOSURE OF PRIVILEGED INFORMATION

A. ~~(S)~~ Harm of Revealing Intelligence Information Related to AQAP including Anwar Al-Aulaqi.

27. (U) The United States has publicly indicated that AQAP is a Yemen-based terrorist group that has claimed responsibility for numerous terrorist acts against United States and other targets, including targets in Yemen itself, and that Anwar al-Aulaqi is a key operational AQAP leader who assisted in preparations for the attempted bombing on December 25, 2009 of Northwest Airlines Flight 253 as it was landing in Detroit. The allegations in this case put at issue the nature and imminence of the threat posed by AQAP and Anwar al-Aulaqi. My privilege assertion extends to additional intelligence information that DoD may possess related to this threat, as well as to sources and methods by which that intelligence information was collected. The disclosure of intelligence information concerning AQAP and Anwar al-Aulaqi that DoD possesses would reveal not only DoD's state of knowledge with respect to that group and Anwar al-Aulaqi, and the threat they pose, but would tend to reveal sources and methods by which such intelligence was obtained. For obvious reasons, DoD cannot reveal to a foreign terrorist organization or its leaders what it knows about their activities and how it may have obtained that information. Such disclosures could not only allow foreign terrorist organizations to adjust their plans based on the state of U.S. knowledge, but alter their

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

communications and activities and thereby shield information that could prove critical to assessing the threat they pose to the United States and other nations. I concur with Director of National Intelligence Clapper's assessment that the disclosure of intelligence information related to AQAP and Anwar al-Aulaqi would cause exceptionally grave harm to national security.

28. (S) [REDACTED]

[REDACTED]

B. ~~(S)~~ Harm of Revealing Information Related to [REDACTED]
[REDACTED]

29. (U) The disclosure of any operational information concerning actions U.S. armed forces have or may plan to take against a terrorist organization overseas would risk serious harm to national security and foreign relations. Official confirmation or denial of any prior strikes could tend to reveal information concerning operational capabilities that could be used by adversaries to evade or counter any future strikes. The disclosure of such operations would allow such targets to act accordingly, including by altering their

~~SECRET//NOFORN~~

~~—SECRET//NOFORN—~~

behavior to evade military action and continue to plot attacks against the United States. In addition, the disclosure of any criteria or procedures that may be utilized by DoD in planning or undertaking military action overseas would plainly compromise the United States' capability to take such action not only in a particular case but in future cases by providing terrorist adversaries with insights into military planning. Finally, as discussed below, public disclosure of either prior or future planned strikes could greatly harm relations with a foreign state.

i. ~~(S)~~ Harm of [REDACTED]

30. (S) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ii. ~~(S)~~ Harm of [REDACTED]

[REDACTED]

~~—SECRET//NOFORN—~~

~~SECRET//NOFORN~~

[REDACTED]

[REDACTED]

C. ~~(S)~~ Harm of [REDACTED]
[REDACTED]

33. ~~(S)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

[REDACTED]

[REDACTED]

[REDACTED]

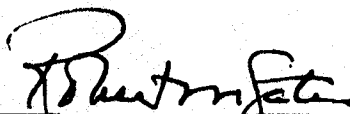
[REDACTED]

CONCLUSION

34. (U) In the foregoing, I have attempted to explain the bases for my judgment that disclosure of the information over which I am asserting privilege would cause harm, up to and including exceptionally grave harm, to national security and also why litigation of the allegations in this case would inherently risk disclosure of the highly sensitive classified national security information over which I have asserted privilege. I respectfully request that the Court uphold my assertion of the military and state secrets privilege to protect information in this case.

35. (U) I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

(U) Executed this 23rd day of September 2010.



Robert M. Gates
Secretary of Defense

~~SECRET//NOFORN~~