

Approved for public release May 5, 2014

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~

1 **IN THE UNITED STATES DISTRICT COURT**
 2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

3 IN RE NATIONAL SECURITY AGENCY)
 4 TELECOMMUNICATIONS RECORDS)
 5 LITIGATION)

MDL Dkt. No. 06-1791-VRW

6 This Document Relates to:

7 **CLASSIFIED DECLARATION**
 8 **OF J. MICHAEL McCONNELL,**
 9 **DIRECTOR OF NATIONAL**
 10 **INTELLIGENCE**

11 (1) All Actions Against the *MCI* and *Verizon*)
 12 Defendants in the Master MCI and Verizon)
 13 Consolidated Complaint, Dkt. 125; (2) *Bready,*)
 14 et al. v. *Verizon Maryland* (06-06313); (3) *Chulsky*)
 15 et al. v. *Cellco Partnership d/b/a Verizon*)
 16 *Wireless* (06-06570); and (4) *Riordan, et al. v.*)
 17 *Verizon Communications* (06-3574))

18 **SUBMITTED IN CAMERA,**
 19 **EX PARTE**

20 Hon. Vaughn R. Walker

21 **IN CAMERA, EX PARTE DECLARATION OF J. MICHAEL McCONNELL,**
 22 **DIRECTOR OF NATIONAL INTELLIGENCE**

23 I, J. Michael McConnell, do hereby state and declare as follows:

24 **(U) INTRODUCTION**

25 1. (U) I am the Director of National Intelligence (DNI) of the United States. I have held
 26 this position since February 2007. Previously, I have served as the Executive Assistant to the
 27 Director of Naval Intelligence, as the Chief of Naval Forces Division at the National Security
 28 Agency, as the Director of Intelligence for the Joint Chiefs of Staff during Operation Desert
 Storm, and as the Director of the National Security Agency.

2. (U) In the course of my official duties, I have been advised of this lawsuit and the
 allegations at issue in the various complaints in this action brought against the Verizon

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Defendants, including the MCI entities.¹ The statements made herein are based on my personal knowledge as well as on information provided to me in my official capacity as Director of National Intelligence. In particular, as set forth below, I have read and personally considered the information contained in the Public and *In Camera*, *Ex Parte* Declarations of Lt. Gen. Keith B. Alexander, Director of the National Security Agency, submitted in this case.

3. (TS//SI [REDACTED] TSP//OC/NF) As Gen. Alexander states, although the Plaintiffs' claims in this lawsuit that the NSA has engaged in a dragnet of content surveillance of millions of Americans are false, this case implicates several highly classified and critically important intelligence activities of the National Security Agency and, in particular, [REDACTED] that cannot be disclosed without causing exceptionally grave harm to U.S. national security. Specifically, [REDACTED] (1) targeted content surveillance [REDACTED] pursuant to the President's Terrorist Surveillance Program ("TSP") and recent orders of the Foreign Intelligence Surveillance Court ("FISC" or "FISA Court"); (2) the bulk collection and targeted analysis of non-content information about telephone and Internet communications—critically important and highly sensitive activities that are also now conducted pursuant to FISC orders and that enable the NSA to uncover the contacts [REDACTED] terrorist organizations; [REDACTED]

¹ (U) Any reference to "Verizon" in this declaration includes all Verizon Defendants in this matter. "Verizon" also specifically includes the MCI Defendants, which are now a part of Verizon, even though "MCI" may at times be referenced separately.

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] including activities utilized to meet the
extremely serious threat of another terrorist attack on the U.S. Homeland [REDACTED]

[REDACTED] (a threat which I describe further below based on recent assessments of the
National Counterterrorism Center (NCTC) prepared in April 2006 and February 2007.)

4. (U) The purpose of this declaration is to formally assert, in my capacity as the Director of National Intelligence and head of the United States Intelligence Community, the military and state secrets privilege (hereafter "state secrets privilege") and a statutory privilege under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence information, sources, and methods that are at risk of disclosure in this case. Disclosure of the information covered by this privilege assertion reasonably could be expected to cause exceptionally grave damage to the national security of the United States and, therefore, the information should be excluded from any use in this case. In addition, I concur with Gen. Alexander's conclusion that, because the very subject matter of this lawsuit concerns highly classified and critically important foreign intelligence activities, the risk is great that further litigation will lead to the disclosure of information harmful to U.S. national security and, accordingly, that this case should be dismissed.

(U) CLASSIFICATION OF DECLARATION

5. (S) Pursuant to the standards in Executive Order No. 12958, as amended by Executive Order No. 13292, this declaration is classified as: TOP SECRET//COMINT [REDACTED]

[REDACTED] TSP//HCS//ORCON//NOFORN//MR. The details concerning these classification

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1 markings are set forth in the *In Camera* Alexander Declaration at ¶¶ 7-10 and are briefly
2 summarized here. Under Executive Order No. 12958, information is classified "TOP SECRET"
3 if unauthorized disclosure of the information reasonably could be expected to cause
4 exceptionally grave damage to the national security of the United States; "SECRET" if
5 unauthorized disclosure of the information reasonably could be expected to cause serious
6 damage to national security; and "CONFIDENTIAL" if unauthorized disclosure of the
7 information reasonably could be expected to cause identifiable damage to national security. At
8 the beginning of each paragraph of this declaration, the letters "U," "C," "S," and "TS" indicate
9 respectively that the information is either UNCLASSIFIED, or is classified CONFIDENTIAL,
10 SECRET, or TOP SECRET.
11
12

13 6. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented Information
14 (SCI), which is "subject to special access and handling requirements because it involves or
15 derives from particularly sensitive intelligence sources and methods." 28 C.F.R.
16 § 17.18(a). This declaration references communications intelligence (COMINT), also referred to
17 as special intelligence (SI), which is a subcategory of SCI that identifies information that was
18 derived from exploiting cryptographic systems or other protected sources by applying methods
19 or techniques, or from intercepted foreign communications. This declaration also references
20 human intelligence (HCS), another subcategory of SCI that identifies information derived from
21 individuals who provide intelligence information.
22
23

24 7. ~~(TS//S [REDACTED] TSP//OC/NF)~~ This declaration also contains information about the
25 Terrorist Surveillance Program (TSP), a controlled access signals intelligence program
26 authorized by the President in response to the attacks of September 11, 2001. Information
27 pertaining to this program is denoted with the special marking "TSP." [REDACTED]
28

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~~TOP SECRET//COMINT~~ [REDACTED]

~~FSP//HCS//ORCON//NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 8. ~~(S)~~ Finally, information labeled "NOFORN" may not be released to foreign
5 governments, foreign nationals, or non-U.S. citizens without permission of the originator and in
6 accordance with DNI policy. The "ORCON" designator means that the originator of the
7 information controls to whom it is released. Finally, this document is marked Manual Review
8 ("MR") indicating that it is not subject to automatic declassification at any specific date.
9

10 **(U) BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

11 9. (U) The position of Director of National Intelligence was created by Congress in the
12 Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
13 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
14 the National Security Act of 1947). Subject to the authority, direction, and control of the
15 President, the Director of National Intelligence serves as the head of the U.S. Intelligence
16 Community and as the principal adviser to the President, the National Security Council, and the
17 Homeland Security Council for intelligence matters related to the national security. *See* 50
18 U.S.C. § 403(b)(1), (2).
19
20

21 10. (U) The United States "Intelligence Community" includes the Office of the Director of
22 National Intelligence; the Central Intelligence Agency; the National Security Agency; the
23 Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National
24 Reconnaissance Office; other offices within the Department of Defense for the collection of
25 specialized national intelligence through reconnaissance programs; the intelligence elements of
26 the military services, the Federal Bureau of Investigation, the Department of the Treasury, the
27
28

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

8 11. (U) The responsibilities and authorities of the Director of National Intelligence are set
9 forth in the National Security Act. *See* 50 U.S.C. § 403-1. These responsibilities include
10 ensuring that national intelligence is provided to the President, the heads of the departments and
11 agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military
12 commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C.
13 § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the
14 requirements and priorities for, and managing and directing the tasking, collection, analysis,
15 production, and dissemination of national intelligence by elements of the Intelligence
16 Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and
17 determining, based on proposals submitted by the heads of agencies and departments within the
18 Intelligence Community, an annual consolidated budget for the National Intelligence Program
19 for presentation to the President, and for ensuring the effective execution of the annual budget
20 for intelligence and intelligence-related activities, and for managing and allotting appropriations
21 for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).
22
23
24

25 12. (U) In addition, the National Security Act of 1947, as amended, provides that "[t]he
26 Director of National Intelligence shall protect intelligence sources and methods from
27 unauthorized disclosure." 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
28

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

9 13. (U) By virtue of my position as the Director of National Intelligence, and unless
10 otherwise directed by the President, I have access to all intelligence related to the national
11 security that is collected by any department, agency, or other entity of the United States.
12 Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order
13 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the
14 President has authorized me to exercise original TOP SECRET classification authority.

16 (U) ASSERTION OF STATE SECRETS PRIVILEGE

17 14. (U) After careful and actual personal consideration of the matter, based upon my own
18 knowledge and information obtained in the course of my official duties, including the Public and
19 *In Camera* Declarations of Gen. Alexander, I have determined that the disclosure of certain
20 information—as set forth herein and described in more detail in the classified declaration of Gen.
21 Alexander—would cause exceptionally grave damage to the national security of the United
22 States and, therefore, must be protected from disclosure and excluded from this case. Thus, as to
23 this information, I formally assert the state secrets privilege. In addition, it is my judgment that
24 sensitive state secrets are so central to the subject matter of the litigation that any attempt to
25 proceed in the case will substantially risk the disclosure of the privileged information described
26
27
28

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1 herein and in more detail in the classified declaration of Gen. Alexander and will therefore risk
2 exceptionally grave damage to the national security of the United States.

3 **(U) ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT**

4 15. (U) Through this declaration, I also hereby invoke and assert a statutory privilege held
5 by the Director of National Intelligence under the National Security Act to protect the
6 information described herein, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory
7 privilege for intelligence sources and methods is coextensive with my state secrets privilege
8 assertion.
9

10 **(U) INFORMATION SUBJECT TO CLAIM OF PRIVILEGE**

11 16. (U) The information subject to my assertion of the state secrets and statutory privileges
12 includes the following:
13

- 14 A. (U) Information regarding the specific nature of the al
15 Qaeda terrorist threat
- 16 B. (U) Information that may tend to confirm or deny whether
17 Verizon/MCI has assisted the NSA with any alleged
18 intelligence activities
- 19 C. (U) Information that may tend to confirm or deny whether
20 the Plaintiffs have been subject to any alleged NSA
21 intelligence activities that may be at issue in this matter;
22 and
- 23 D. (U) Information concerning any NSA intelligence,
24 activities, sources, or methods, including:
25 (1) (U) Information concerning the scope and operation of
26 the Terrorist Surveillance Program, including information
27 that may be needed to demonstrate that the TSP was limited
28 to one-end foreign al Qaeda communications and that the
NSA does not otherwise engage in the content surveillance
dragnet that the Plaintiffs allege; and

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(2) (U) Information that would tend to confirm or deny whether the NSA collects large quantities of communication records information as the Plaintiffs allege.

(U) DESCRIPTION OF INFORMATION AND HARM OF DISCLOSURE

A. (U) Information Concerning the Continuing al Qaeda Terrorist Threat

17. ~~(S//OC/NF)~~ Based on all of the intelligence information presently available to us, the U.S. Intelligence Community judges the al Qaeda terrorist network has the intention and the potential capability to carry out catastrophic terrorist acts on the U.S. Homeland. Indeed, intelligence indicates al Qaeda's central leadership is pursuing multiple, possibly related, paths to an attack against the Homeland. International counterterrorism efforts in 2006—especially the August disruption of a major aviation plot by United Kingdom (UK) and Pakistani authorities—have been successful, but they underscore that al Qaeda's core elements are resilient and continue to plot attacks against U.S. interests overseas. Preventing such attacks is the U.S. Intelligence Community's highest priority. The intelligence activities that are implicated by, and put at risk of, disclosure in this lawsuit must be understood in the context of the extremely serious threat faced by the United States.

18. (U) With the attacks of September 11, al Qaeda demonstrated its ability to introduce agents into the United States undetected and to perpetrate devastating attacks. As the President noted in his January 23, 2007, State of the Union Address, "In the mind of the terrorists, this war began well before September the 11th, and will not end until their radical vision is fulfilled. And these past five years have given us a much clearer view of the nature of this enemy. . . . Our enemies are quite explicit about their intentions. They want to overthrow moderate governments, and establish safe havens from which to plan and carry out new attacks on our

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country.”

19. ~~(S//HCS//OC/NF)~~ Since September 11, al Qaeda leaders have repeatedly promised to deliver another, even more devastating attack on America. For example, in October 2002, al Qaeda leader Ayman al-Zawahiri stated in a video addressing the "citizens of the United States": "I promise you that the Islamic youth are preparing for you what will fill your hearts with horror." In an October 2004 tape, al-Zawahiri chastised the Muslim world—"Limiting the battle to fighting only the Jews in Palestine and leaving America without attacking it, will not restrain America and the crusaders against us." In an audiotope released on January 19, 2006, Bin Ladin warned United States citizens that "operations in America" are "under preparation and you will see them on your very own soil as soon as they are completed, Allah willing." And again, in June 2006 Bin Ladin claimed, "We will continue to fight you and your allies everywhere, in Iraq, Afghanistan, Somalia and Sudan to run down your resources and kill your men until you return defeated to your nation."

20. (U) In recent months, al Qaeda has reiterated its intent to inflict a catastrophic terrorist attack on the United States. As recently as December 20, 2006, al-Zawahiri issued threats of attacking the U.S. Homeland saying, "You shall never dream of security until we truly experience it in Palestine and all lands of Islam . . . if we are struck in our countries, we shall never stop striking you in your countries . . . and as our commander, Shaykh Usama Bin Ladin . . . told you, 'As you bomb, you will be bombed, and as you kill, you will be killed.'"

21. ~~(S//NF)~~ Since the September 11 attacks, al Qaeda has staged several large-scale attacks around the world, including in Indonesia, London, Iraq, Saudi Arabia, Algeria, and Turkey, killing hundreds of innocent people. Foiled plots, including the plot disrupted in August 2006 to blow up multiple airliners transiting the Atlantic Ocean en route to North American cities, would

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1 have claimed thousands more innocent victims had they been successful.

2 (S//NF) Al Qaeda's Likely Presence in the United States

3 22. ~~(S//HCS//OC/NF)~~ Classified intelligence information provides a more specific and
4 alarming picture of the continuing terrorist threat to the Homeland posed by al Qaeda. In sum,
5 the U.S. Intelligence Community believes the al Qaeda terrorist network intends to execute a
6 catastrophic terrorist attack on the U.S. Homeland. For this reason, the President authorized the
7 Terrorist Surveillance Program and related activities described in this Declaration. The
8 intelligence activities at issue in this case are thus being utilized to meet a known, real, and
9 perhaps imminent threat to the lives of thousands of Americans and, indeed, to the continuity of
10 the United States Government. The threat we face cannot be understated.

11
12 23. ~~(TS//HCS//OC/NF)~~ British and Pakistani authorities in early August 2006 disrupted
13 the most significant known, advancing threat to the U.S. Homeland and U.S. interests abroad
14 since September 11, 2001. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 24. ~~(S//HCS//OC/NF)~~ In addition, based on April 2006 and February 2007 assessments
22 by the National Counterterrorism Center (NCTC), a national intelligence center that is an
23 element of the ODNI, the U.S. Intelligence Community continues to receive reliable intelligence
24 [REDACTED] that al Qaeda remains intent on conducting
25 a grand-scale attack on the Homeland with a likely focus on U.S. symbols of power or economic
26 might. Al Qaeda continues to have these intentions despite the degradation of its leadership,
27
28

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resources, and operational capability in the wake of a steady stream of deaths, captures, and disruptions. Intelligence sources have [REDACTED]

[REDACTED] As a result of our disruptions of the group's planning and increased security measures, however, "softer" targets have become increasingly attractive, although the 2006 US-UK aviation plot discussed above shows the group does not shrink from attempting targets with enhanced security. Specific softer targets include tourist sites, shopping centers, and passenger trains. [REDACTED]

[REDACTED] Important pieces of this intelligence information are detailed further below.

25. ~~(S//HCS/NF)~~ We have numerous reasons to believe al Qaeda is still plotting another attack on U.S. soil. Besides Bin Ladin's own statements, his deputy, Ayman al-Zawahiri, issued threats against the United States and its interests and enjoined Muslims worldwide to take up violent jihad in more than a dozen audio or video taped statements in 2006 and at least four thus far in 2007.

26. ~~(S//HCS/OC/NF)~~ [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 27. ~~(S//HCS//OC)~~ The Intelligence Community assesses al Qaeda is most likely employing
5 a diversified operational planning model, involving multiple, probably autonomous, concurrent
6 efforts. This is possibly in response to successful U.S. targeting of known al Qaeda senior
7 leaders. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 the US-UK transatlantic aviation plot disrupted in August 2006 indicates al
13 Qaeda is still capable of advancing efforts for high profile external attacks.

14 28. ~~(TS//HCS//OC/NF)~~ [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 29. ~~(S//HCS//OC/NF)~~ Our intelligence also indicates that al Qaeda is interested in using
21 Mexico as a point of entry into the United States. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Our intelligence also indicates that al Qaeda is continually looking for operatives
25 capable of entering the United States without undue scrutiny. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 (S//NF) Possible al Qaeda Targets and Attacks

2 30. (TS//[REDACTED]//OC/NF) Although any attack on the Homeland would be viewed by al Qaeda
3 as a success, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 31. (S//HCS//OC/NF) With respect to attacks in the Homeland, the compilation of data on
12 al Qaeda's plotting attempts suggests the group remains focused on its strategic targeting
13 doctrine—striking major U.S. cities or industries, causing major psychological and economic
14 impact. The group's signature attack is one that would be impressive in its scope or audacity and
15 hits either multiple targets simultaneously or a single high profile place or person. Reporting
16 [REDACTED] has identified a variety of potential targets that would be
17 attractive to group operatives, such as:

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 32. (TS//HCS//[REDACTED]//OC/NF) Although intelligence regarding specific targets or locations is
24 often incomplete, known target locations include large cities [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

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1 [REDACTED]
2 [REDACTED]
3 33. (~~S//HCS//OC/NF~~) Although not eliminating al Qaeda's plotting to conduct a spectacular
4 attack against the U.S., constraints on al Qaeda's capabilities and increased security measures at
5 airports, government buildings, and other high-profile targets in the United States could be
6 making lower profile, less-protected targets increasingly attractive. An attack in the United
7 States, like those against London's transport systems, would probably meet al Qaeda's objectives
8 without requiring the planning, resources, and expertise necessary for a complex September 11-
9 style attack. This shift in al Qaeda's planning has become apparent from our current
10 intelligence. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 36. ~~(S//HCS//OC/NF)~~ The U.S. Intelligence Community remains concerned the multiple
6 terrorist attacks carried out in London in July 2005 and the foiled 2006 US-UK airline plot may
7 be a harbinger of similar attacks to come in the United States in which Islamic extremists in
8 Western countries—whether homegrown or sent from abroad—will mimic and refine the small
9 explosives tactics used in these operations. Of specific concern to the U.S. Intelligence
10 Community in the wake of the London bombings is the continuing interest al Qaeda and its
11 affiliates have expressed in attacking [REDACTED] Our intelligence suggests
12 any attack against [REDACTED] most likely would occur in major cities or against
13 [REDACTED] serving major cities, which would be consistent with al Qaeda's expressed intent to inflict
14 a high number of casualties in key centers of the economy. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 37. ~~(S//HCS//OC/NF)~~ [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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MDL NO. 06-1791

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~FSP//HCS//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 While U.S. authorities have identified instances of possible surveillance and pre-operational
8 activities aimed at gathering intelligence on rail transit systems, as yet there is no corroborating
9 intelligence to link them to operational planning against U.S. mass transit systems.

10 38. ~~(S//HCS//OC/NF)~~ The U.S. Intelligence Community also believes al Qaeda and its
11 affiliates continue to target the civil aviation sector, including U.S. passengers and Western
12 aircraft overseas. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 39. ~~(TS//HCS//OC/NF)~~ Despite our intelligence successes, however, there are significant
17 swaths of al Qaeda activity that almost certainly remain undetected. We believe it likely that, at
18 any given point in time, the group has multiple plots in play against the U.S. Homeland, some of
19 which could be in the advanced stages of preparation. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

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~~TOP SECRET//COMINT [REDACTED] FSP//HCS//ORCON/NOFORN//MR~~(S//NF) Unconventional Weapons

40. ~~(TS//HCS [REDACTED] //OC/NF)~~ The threat posed by al Qaeda extends beyond the realm of conventional weapons. We are confident al Qaeda was actively pursuing chemical, biological, and radiological capabilities prior to the fall of the Taliban in late 2001 and has been actively pursuing a nuclear capability since at least 2005. Based on the extent of senior leadership support for the Chemical, Biological, Radiological and Nuclear (CBRN) efforts, a clearly stated intent, and reporting since 2001, we judge al Qaeda remains determined to inflict mass casualties against Homeland targets with CBRN. In addition, in 2006 al Qaeda in Iraq (AQI) leader Abu Ayyub al-Masri publicly called for scientific assistance for AQI's CBRN efforts- [REDACTED]

[REDACTED]

42. ~~(S//NF)~~ [REDACTED]

[REDACTED]

Although al Qaeda has long desired a nuclear capability, to date we assess it is

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1 unlikely al Qaeda has acquired sufficient materials and expertise to do so.

2 43. ~~(S//NF)~~ Among al Qaeda and associated jihadist networks, information is proliferating
3 on how to produce chemical and biological agents, how to build chemical and radiological
4 dispersal devices, and the theory behind nuclear weapon design, according to various sources,
5 including Internet sites [REDACTED] This continued interest and
6 pursuit of unconventional weapons increases the likelihood al Qaeda or an associated group will
7 attempt to conduct CBRN attacks against the United States or U.S. interests worldwide.

9 44. ~~(TS// [REDACTED] //OC/NF)~~ These various examples of some of our intelligence information
10 demonstrate the al Qaeda network continues to plan ways to inflict a catastrophic attack. In sum,
11 based on all of the intelligence presently available to us, the U.S. Intelligence Community judges
12 al Qaeda poses a grave danger to the U.S. Homeland. The severity of that threat and the
13 difficulty of tracking al Qaeda members is precisely the reason the Government is utilizing all
14 lawful intelligence-gathering capabilities. I set forth this threat information not only to provide
15 the Court with crucial background as to why the intelligence activities at issue in this case are
16 being undertaken, but also to assert a claim of privilege over this threat information. Although
17 the foregoing threat assessment demonstrates precisely why we undertake these activities, the
18 Government cannot disclose this information in defending the legality of the intelligence
19 activities being challenged, since to do so obviously would disclose to our adversaries what we
20 know of their plans and how we may be obtaining information about them. Such disclosure
21 would lead our adversaries not only to alter their plans, but also to implement greater security for
22 their communications, thereby increasing the risk of non-detection. In addition, disclosure of
23 threat information might reveal human sources for the United States and, thus, compromise those
24 sources and put lives at danger. Accordingly, although I believe such threat information is
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1 crucial to understanding the context in which NSA conducts the intelligence activities put at
2 issue by Plaintiffs' lawsuit, I must assert the state secrets privilege and DNI statutory privilege
3 over the information because of the grave damage to national security that could reasonably be
4 expected to result from its disclosure.

5 **B. (U) Information That May Tend to Confirm or Deny Whether Verizon/MCI Has**
6 **Assisted the NSA With Any Alleged Intelligence Activities**

7 45. ~~(TS//SI [REDACTED] TSP//OC/NF)~~ As set forth in more detail in Gen. Alexander's *In*
8 *Camera* Declaration, the United States faced urgent and immediate intelligence challenges after
9 the September 11 attacks, and the President authorized signals intelligence activities designed to
10 meet those challenges and to detect and prevent future terrorist attacks by al Qaeda and its
11 affiliates. The NSA [REDACTED]
12 [REDACTED] intelligence activities, including the Terrorist Surveillance
13 Program and related content surveillance now subject to orders of the Foreign Intelligence
14 Surveillance Court; the bulk collection of telephony and Internet meta data currently authorized
15 by the FISC and used to discover contacts [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 46. ~~(TS//SI [REDACTED] TSP//OC/NF)~~ [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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~~TOP SECRET//COMINT [REDACTED] FSP//HCS//ORCON/NOFORN//MR~~

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47. (TS//SI [REDACTED] FSP//OC/NF) [REDACTED]

48. (TS//SI [REDACTED] OC/NF) [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON//NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 49. ~~(TS//SI~~ [REDACTED] ~~TSP//OC/NF)~~ For the foregoing reasons, in my judgment,
14 [REDACTED] would cause exceptionally
15 grave harm to the national security of the United States [REDACTED]
16 [REDACTED] Accordingly, I assert the
17 state secrets and DNI statutory privilege over such information, including the information
18 described in the *In Camera* Declaration of Gen. Alexander.
19

20 C. (U) Information That May Tend to Confirm or Deny Whether the Plaintiffs
21 Have Been Subject to any Alleged NSA Intelligence Activities That May Be
22 at Issue in This Matter

23 50. ~~(TS//SI//NF)~~ I further assert the state secrets privilege and the DNI statutory privilege to
24 protect from disclosure in this case information that would reveal or tend to reveal whether or not
25 the Plaintiffs in this case have been subject to any NSA intelligence activities. *See In Camera*
26 Alexander Decl. ¶¶ 47-52.

27 51. ~~(TS//SI//NF)~~ [REDACTED]
28

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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON//NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~FSP//HCS//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 As should be obvious, to confirm or deny whether someone is a target of surveillance would
6 disclose either who is being targeted—thus compromising that collection—or who is not being
7 targeted, thus revealing to adversaries that an individual is a secure source for communicating or,
8 more broadly, the methods being used to conduct surveillance. While it may seem innocuous to
9 disclose that law-abiding citizens are not being targeted, this may provide insight to a trained eye
10 as to the scope of the NSA's activities. Moreover, providing assurances that someone is not
11 being targeted becomes unworkable, and itself revealing, in cases where an individual may be
12 targeted. A refusal to confirm or deny only in cases where surveillance is occurring would
13 effectively disclose and compromise that surveillance. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 The only recourse for NSA is to
21 neither confirm nor deny whether someone has been targeted or subject to NSA collection,
22 regardless of whether the individual has been targeted or not. To say otherwise when challenged
23 in litigation would result in the frequent, routine exposure of NSA information, sources, and
24 methods and would severely undermine surveillance activities in general.

25 **D. (U) Information Concerning Any NSA Activities, Sources, or Methods**

26 52. (U) I am also asserting the state secrets and DNI statutory privilege over any other facts
27 concerning NSA intelligence sources and methods that would be needed to resolve this case,
28

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~~TOP SECRET//COMINT~~ [REDACTED] ~~FSP//HCS//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON//NOFORN//MR~~

1 including (1) facts concerning the operation of the Terrorist Surveillance Program needed to
2 demonstrate that the TSP was limited as the President stated to the interception of one-end
3 foreign communications reasonably believed to involve a member or agent of al Qaeda or an
4 affiliated terrorist organization, and that the NSA does not otherwise intercept the content of
5 millions of communications sent or received inside the United States by millions of Americans
6 as the Plaintiffs allege; and (2) facts that would confirm or deny whether the NSA collects large
7 quantities of communication records information. In my judgment, the disclosure of such
8 information would cause exceptionally grave harm to national security.
9

10 53. ~~(TS//SI//TSP//OC/NF)~~ Specifically, based on my personal consideration and judgment
11 as to the harm disclosure would cause to national security, my privilege assertion includes but is
12 not limited to the following activities discussed by Gen. Alexander:
13

14 (A) ~~(TS//SI//TSP//OC/NF)~~ First, I assert privilege over classified details about the
15 operation of the TSP, including how targets were selected under the program, how specific
16 methods were used to intercept telephone and Internet communications and to minimize the risk
17 of collecting non-target communications and purely domestic communications, as well as related
18 classified details [REDACTED] I
19 also assert privilege over facts that would disclose the operational swiftness and agility of the
20 TSP and meta data analysis, [REDACTED]
21 [REDACTED]
22

23 Finally, I assert privilege
24 over information that would reveal the effectiveness and success of the TSP. In my judgment,
25 these operational details constitute vital intelligence sources and methods, even now that the
26 program is no longer authorized, because they would reveal the NSA's capabilities and methods,
27 including those now being utilized under the current FISC orders.
28

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1 (B) (TS//SI//FSP//OC/NF) Second, I assert privilege over any facts about NSA activities
2 that may be needed to disprove Plaintiffs' allegations of a dragnet of content surveillance,
3 including facts about the operation of the TSP [REDACTED]

4 [REDACTED] In my judgment, the NSA
5 should not be forced to confirm or reveal its intelligence sources and methods in order to show
6 that it is not doing something as alleged in a lawsuit, since this may inherently require the
7 disclosure of multiple related activities, as Gen. Alexander explains. Revealing the operations of
8 the TSP or other intelligence sources and methods [REDACTED]

9 [REDACTED]
10 [REDACTED] would cause grave harm to the national security by revealing the scope and
11 sophistication of NSA activities, which foreign adversaries would then seek to evade.
12

13 (C) (TS//SI//FSP//OC/NF) Third, I also assert privilege over facts that would
14 disclose the NSA's meta data collection activities. In my judgment, the NSA is unable to
15 disclose any information about the existence or operation of the NSA's bulk collection or
16 targeted analysis of Internet or telephony meta data without causing grave harm to national
17 security. These are among the most important intelligence tools the NSA uses and they have
18 never been officially confirmed or denied by the United States. To confirm these activities [REDACTED]
19 [REDACTED] risks seriously undermining an essential tool for tracking possible
20 terrorist plots and would also undermine this activity as now authorized under current FISC
21 orders.
22

23 (D) (TS//SI//FSP//OC/NF) Finally, I also assert privilege over information concerning
24 the various FISC Orders that are described by Gen. Alexander. In my judgment, disclosure of
25 current surveillance activities of the FISC, either directly or indirectly, would seriously
26 compromise, if not destroy, vital ongoing intelligence operations.
27
28

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1 54. (TS//SI [REDACTED] FSP//OC/NF) Based on my experience, I believe that the NSA
2 activities described herein—the content and meta data collection activities authorized by the
3 President after 9/11 and subsequently authorized by the FISC—are among the most important
4 intelligence tools available to the United States for protecting the Homeland from another
5 catastrophic terrorist attack. These intelligence activities have given the United States
6 unparalleled ability to understand the interconnected groups and agents that al Qaeda has
7 become. They also have allowed us to identify and track terrorists as they move around the
8 world [REDACTED] Disclosing the information described
9 herein and by Gen. Alexander would compromise these critical activities, sources, and methods,
10 thereby helping our adversaries evade detection and causing exceptionally grave damage to the
11 national security of the United States.
12
13

14 (U) RISK OF LITIGATION

15 55. (TS//SI [REDACTED] OC/NF) Finally, I concur with Gen. Alexander's conclusion that
16 further litigation of this case will inherently risk the disclosure of highly classified activities.
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26 56. (TS//SI//OC/NF) The stakes we face in the U.S. Intelligence Community are of the
27 highest magnitude. We know al Qaeda is planning to attack inside the United States again,
28

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1 whether it be a "small" scale attack on shopping malls or "fun" places that kills dozens, a
2 devastating attack on aviation or rail systems that kills hundreds, a catastrophic, mass-casualty
3 attack that kills thousands, an attack on government or economic sector infrastructure that would
4 cause severe economic harm or threaten the continuity of government. The NSA's activities
5 described herein and by Gen. Alexander are all directed at this terrible threat.

6
7 57. ~~(TS//NF)~~ For these reasons, in addition to invoking the state secrets and DNI statutory
8 privilege to protect the intelligence information, sources, and methods at issue, I respectfully
9 urge the Court to dismiss this case.

10
11 I declare under penalty of perjury that the foregoing is true and correct.
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DATE:

20 APR 07

J. MICHAEL McCONNELL
Director of National Intelligence

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