



*United States Attorney
Southern District of New York*

86 Chambers Street, 5th Floor
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June 17, 2009

By Hand Delivery

Honorable Victor Marrero
United States District Judge
United States Courthouse
500 Pearl Street, Room 660
New York, New York 10007

Re: Doe v. Holder, 04 Civ. 2614 (VM)

Dear Judge Marrero:

This Office represents defendants in the above-referenced matter. Pursuant to the Court's memo endorsement dated May 26, 2009, enclosed please find a courtesy copy of a Certification executed by James W. McJunkin, Deputy Assistant Director, Federal Bureau of Investigation, certifying that disclosure of the National Security Letter ("NSL") served upon plaintiff Doe in 2004 may result in a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, that is related to an authorized investigation to protect against international terrorism or clandestine intelligence activities. (For filing purposes, the Certification was attached as the only exhibit to the Declaration of Jeffrey Oestericher, dated June 17, 2009.) In addition, defendants are filing today with the Court Security Officer, Michael P. Macisso, a classified declaration from an FBI Supervisory Special Agent explaining why disclosure of the NSL may result in these enumerated harms. The declaration has been classified at the Secret level. Pursuant to 18 U.S.C. § 3511(e), the Government respectfully requests that the Court review the classified declaration *ex parte* and *in camera*.

The classified declaration satisfies the Government's burden of showing that there is good reason to believe that disclosure of the NSL served upon plaintiff Doe may result in one of the harms enumerated in 18 U.S.C. § 3511(b), and that the harm is related to an authorized investigation to protect against international terrorism or clandestine intelligence activities. See Doe v. Mukasey, 549 F.3d 861, 875 (2d Cir. 2008). As

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required by the Second Circuit, the classified declaration both indicates the nature of the apprehended harm and provides the Court with an ample basis to assure itself that the link between disclosure and risk of harm is substantial. Id. at 881. Accordingly, the Court should uphold the nondisclosure requirement with respect to the NSL served on plaintiff Doe.

The Government respectfully requests that this letter be docketed and made part of the record in this case. Thank you for your attention to this matter.

Respectfully,

LEV L. DASSIN
Acting United States Attorney

By:


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Encl.

cc: Jameel Jaffer, Esq.
Melissa Goodman, Esq.
(By facsimile)