

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NASSER AL-AULAQI, as personal  
representative of the estate of ANWAR  
AL-AULAQI, et al.,

Plaintiffs,

v.

LEON E. PANETTA, et al., in their  
individual capacities,

Defendants.

No. 1:12-cv-01192 (RMC)

**UNITED STATES' STATEMENT OF INTEREST**

Under 28 U.S.C. § 517, the United States of America, which is not a party to this suit, hereby notifies this Court of its interest in this litigation.<sup>1</sup> The United States has an interest in this litigation consistent with its assertion of the military and state secrets privilege in related litigation that involved many of the allegations contained in the complaint in the instant case. Relevant to this interest, the United States notes the following:

1. On July 18, 2012, Plaintiffs Nasser Al-Aulaqi and Sarah Khan filed a complaint, purportedly on behalf of the estates of Anwar Al-Aulaqi, Abdulrahman Al-Aulaqi, and Samir Khan, against the Secretary of Defense, the then-Director of the Central Intelligence Agency (DCIA), and two high-ranking military officers in their individual capacities. *See* Compl. ¶¶ 10-15. The complaint alleges that these government officials “authorized and directed” two separate “missile strikes” in Yemen targeting Anwar Al-Aulaqi and Ibrahim Al-Banna that killed

---

<sup>1</sup> 28 U.S.C. § 517 provides: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

decedents, one allegedly targeting Anwar Al-Aulaqi and the other allegedly targeting Ibrahim Al-Banna. *See id.* ¶¶ 12-15, 31, 37. Plaintiffs claim that the alleged strike targeting Anwar Al-Aulaqi occurred after the DCIA had placed him on a purported CIA “kill list,” and after a Department of Defense official had placed him on a purported Joint Special Operations Command (JSOC) “kill list.” *Id.* ¶ 2, 12, 13, 24.

2. Plaintiffs also allege that at the time of the alleged strike targeting Anwar Al-Aulaqi, he “was not engaged in activities that presented a concrete, specific, and imminent threat of death or serious physical injury.” *Id.* ¶ 34. They further allege that, in conducting the two purported strikes, “additional measures could have been taken to protect bystanders from harm.” *Id.* ¶ 31. *See also id.* ¶ 40.<sup>2</sup>

3. This is not the first lawsuit raising allegations relating to the alleged targeting of Anwar Al-Aulaqi. In *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010) (the “injunction case”), Plaintiff Nasser Al-Aulaqi sought a preliminary injunction, purportedly as the next friend of his son, Anwar Al-Aulaqi, “barring the President, the CIA, and DOD (including JSOC) from carrying out the targeted killing of [Anwar Al-Aulaqi] unless the executive concluded that he presented a concrete, specific, and imminent threat to life.” Compl. ¶ 27. *See also* Plaintiff’s Motion for a Preliminary Injunction at 1, *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010) (No. 1:10-cv-1469), ECF No. 3. As in the current litigation, *see* Compl. ¶ 12, Plaintiff Nasser Al-Aulaqi alleged in the injunction case that the DCIA had placed Anwar Al-Aulaqi on a purported CIA “kill list.” *See* Complaint ¶¶ 11, 21, *Al-Aulaqi*, 727 F. Supp. 2d 1 (No. 1:10-cv-1469), ECF No. 1.

---

<sup>2</sup> In filing this statement, the United States does not suggest that any of Plaintiffs’ allegations are true, nor does it confirm or deny any portion of the complaint.

4. During the injunction case—to which the Government was a party—the military and state secrets privilege was invoked. *See Al-Aulaqi*, 727 F. Supp. 2d at 52. In support of the invocation of the state secrets privilege, both unclassified and classified declarations were submitted by the Director of National Intelligence, the Secretary of Defense, and the DCIA. *See id.* at 53 n.15. *See also* Ex. 1, Unclassified Declaration in Support of Formal Claim of State Secrets Privilege by James R. Clapper, Director of National Intelligence; Ex. 2, Public Declaration and Assertion of Military and State Secrets Privilege by Robert M. Gates, Secretary of Defense; Ex. 3, Declaration and Formal Claim of State Secrets Privilege and Statutory Privileges by Leon E. Panetta, Director, Central Intelligence Agency.<sup>3</sup>

5. While invoking the state secrets privilege, the Government also advised the court that it “need not, and should not, reach” the state secrets issue because the case could be resolved on other grounds presented. *Al-Aulaqi*, 727 F. Supp. 2d at 53. The court dismissed the complaint in *Al-Aulaqi v. Obama* “because plaintiff lacks standing and his claims are non-justiciable,” and did not reach the invocation of the state secrets privilege “because the state secrets privilege should not be invoked ‘more often or extensively than necessary.’” *Id.* at 54 (quoting *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1080 (9th Cir. 2010) (en banc)).

6. The invocation of the privilege in the injunction case covered, among other categories of information: “information that relates to the terrorist threat posed by Anwar al-Aulaqi, including information related to whether this threat may be ‘concrete,’ ‘specific’ or ‘imminent’”; “[i]ntelligence information concerning Anwar al-Aulaqi”; “any information concerning . . . any criteria or procedures [the Department of Defense] may utilize in connection with [military operations in Yemen]”; and “any information, if it exists, that would tend to confirm or deny any

---

<sup>3</sup> For the Court’s convenience, the United States has attached copies of the filed unclassified declarations.

allegations in the Complaint pertaining to the CIA.” See Ex. 1, Unclassified Declaration in Support of Formal Claim of State Secrets Privilege by James R. Clapper, Director of National Intelligence (Clapper Decl.) ¶¶ 18-19; Ex. 2, Public Declaration and Assertion of Military and State Secrets Privilege by Robert M. Gates, Secretary of Defense (Gates Decl.) ¶ 7; Ex. 3, Declaration and Formal Claim of State Secrets Privilege and Statutory Privileges by Leon E. Panetta, Director, Central Intelligence Agency (Panetta Decl.) ¶ 3.

7. In addition, there are a number of cases being litigated under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), in which various plaintiffs are seeking records that would confirm whether or not the United States was involved in the deaths of Anwar Al-Aulaqi, Abdulrahman Al-Aulaqi, and Samir Khan. See Complaint ¶¶ 1-6, *First Amendment Coalition v. Department of Justice*, No. 4:12-cv-1013 (N.D. Cal. Feb. 29, 2012), ECF No. 1; Complaint ¶¶ 1, 30, *American Civil Liberties Union v. U.S. Department of Justice*, No. 1:12-cv-794 (S.D.N.Y. Feb. 1, 2012), ECF No. 1; Complaint ¶¶ 1-11, *The New York Times Co. v. Department of Justice*, No. 1:11-cv-9336 (S.D.N.Y. Dec. 20, 2011), ECF No. 1. Cf. *American Civil Liberties Union v. Department of Justice*, 808 F. Supp. 2d 280, 284 (D.D.C. 2011), *appeal pending*, No. 11-5320 (D.C. Cir.) (oral argument held on Sept. 20, 2012).

8. In all of these cases, the U.S. government has neither confirmed nor denied any involvement in the deaths of these individuals and has explained in affidavits the harm that would result from such a confirmation or denial. See, e.g., Defs.’ Mot. for Summ. J. at 1-3, *First Amendment Coalition*, No. 4:13-cv-1013 (N.D. Cal. Sept. 14, 2012), ECF No. 30; Declaration of Vice Admiral Kurt W. Tidd ¶ 12, *First Amendment Coalition*, No. 4:12-cv-1013 (N.D. Cal. Sept. 14, 2012), ECF No. 30-2; Mem. of Law in Supp. of Defs.’ Mot. for Summ. J. at 2, 29-32, *Am. Civil Liberties Union*, No. 1:12-cv-794 (S.D.N.Y. June 20, 2012), ECF No. 25; Declaration of

John F. Hackett, Chief of the Information and Data Management Group, the Office of the Chief Information Officer, Office of the Director of National Intelligence ¶ 24, *Am. Civil Liberties Union*, No. 1:12-cv-794 (S.D.N.Y. June 20, 2012), ECF No. 27; Mem. of Law in Supp. of Defs.’ Mot. for Summ. J. at 2, 29-32, *The New York Times Co.*, No. 1:12-cv-9336 (S.D.N.Y. June 20, 2012), ECF No. 12; Declaration of John F. Hackett, Chief of the Information and Data Management Group, the Office of the Chief Information Officer, Office of the Director of National Intelligence ¶ 24, *The New York Times Co.*, No. 1:11-cv-9336 (S.D.N.Y. June 20, 2012), ECF No. 13. *Cf. Am. Civil Liberties Union*, 808 F. Supp. 2d at 284.

9. The United States notes that on its face, Plaintiffs’ complaint in the instant case includes allegations regarding information covered by the earlier invocation of the military and state secrets privilege in the *Al-Aulaqi v. Obama* injunction case. *Compare, e.g.*, Compl. ¶ 24 (alleging that “Anwar Al-Aulaqi was not engaged in activities that presented a concrete, specific, and imminent threat to life”), *with* Clapper Decl. ¶ 18 (asserting state secrets privilege over “information that relates to the terrorist threat posed by Anwar al-Aulaqi, including information related to whether this threat may be ‘concrete,’ specific’ or ‘imminent’”); Compl. ¶¶ 31, 35, 37, 40 (alleging that the Secretary of Defense authorized the firing of missiles at individuals in Yemen “without taking legally required measures to avoid harm to bystanders”), *with* Gates Decl. ¶ 7 (asserting state secrets privilege over “any information concerning . . . any criteria or procedures [the Department of Defense] may utilize in connection with [military operations in Yemen]”); Compl. ¶ 15 (alleging that “CIA director . . . authorized and directed the missile strikes that killed Anwar Al-Aulaqi, Samir Khan, and Abdulrahman Al-Aulaqi”), *with* Panetta Decl. ¶ 3 (asserting state secrets privilege over “any information, if it exists, that would tend to confirm or deny any allegations in the Complaint pertaining to the CIA”).

10. In 2009, the Attorney General of the United States issued a policy governing the invocation of the military and state secrets privilege. Under that policy, the Department of Justice will defend assertion of that privilege “only to the extent necessary to protect against the risk of significant harm to national security,” and “will seek to dismiss a litigant’s claim or case on the basis of the state secrets privilege only when doing so is necessary to protect against” such a risk. *See Ex. 4, September 23, 2009 Memorandum Regarding Policies and Procedures Governing Invocation of the State Secrets Privilege*, at 1. Contemporaneous with the filing of this notice, the individual defendants have filed a motion to dismiss Plaintiffs’ claims in the instant litigation on a variety of grounds. Consistent with its policy, the United States is not asserting the state secrets privilege in this litigation at this time. *Accord Al-Aulaqi*, 727 F. Supp. 2d at 53 (“[D]efendants also correctly and forcefully observe that this Court need not, and should not, reach their claim of state secrets privilege because the case can be resolved on the other grounds they have presented. It is certainly true that the state secrets privilege should be ‘invoked no more often or extensively than necessary.’” (quoting *Jeppesen Dataplan*, 614 F.3d at 1080)). However, should this case proceed following resolution of the individual defendants’ motion to dismiss, the United States reserves its right to invoke the military and state secrets privilege to the extent that further litigation poses a “risk of significant harm to national security” and to seek appropriate relief.

Dated: December 14, 2012

Respectfully submitted,

STUART F. DELERY  
Principal Deputy Assistant Attorney General  
Civil Division

RUPA BHATTACHARYYA  
Director, Torts Branch

MARY HAMPTON MASON  
Senior Trial Counsel  
D.C. Bar No. 427461

/s/ Paul E. Werner  
PAUL E. WERNER  
(MD Bar, under LCvR 83.2(e))  
Trial Attorney  
United States Department of Justice  
Torts Branch, Civil Division  
P.O. Box 7146, Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-4152 (phone)  
(202) 616-4314 (fax)  
E-mail: Paul.Werner@usdoj.gov

Attorneys for Defendants and the United  
States.