

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)	
)	Case No. CR 13-00120-S-EJL
Plaintiff,)	
)	
v.)	
)	DECLARATION AND CLAIM
FAZLIDDIN KURBANOV,)	OF PRIVILEGE
)	
Defendant.)	

DECLARATION AND CLAIM OF PRIVILEGE
OF THE ATTORNEY GENERAL OF THE UNITED STATES

I, Eric H. Holder, Jr., hereby declare the following:

1. I am the Attorney General of the United States of America and head of the United States Department of Justice, an Executive Department of the United States. I have official custody of and control over the files and records of the United States Department of Justice. The matters stated herein are based on my knowledge, on consideration of information available to me in my official capacity as Attorney General, on information provided by agencies in the U.S. Intelligence Community, on discussions that I have had with other Justice Department officials, and on conclusions I have reached after my review of this information.

2. Under the authority of 50 U.S.C. §§ 1806(f) and 1825(g), I submit this declaration pursuant to the Foreign Intelligence Surveillance Act of 1978 (“FISA”), as amended, in connection with the above-captioned criminal proceeding. I have been advised that the Government presently intends to use information obtained or derived from FISA-authorized electronic surveillance and physical searches in the criminal proceeding against the Defendant. *See* 50 U.S.C. §§ 1806(c) and 1825(d). Accordingly, Defendant Fazliddin Kurbanov, by and

through his attorney, has filed a motion seeking disclosure of FISA-related materials and suppression of FISA-acquired information (hereinafter the “Defendant’s Motion”). The Government will file an opposition to the Defendant’s Motion. For the reasons set forth in the Government’s Opposition, it is necessary to provide this Court with the applications submitted to, and the orders issued by, the Foreign Intelligence Surveillance Court (“FISC”), as well as other related documents (hereinafter collectively referred to as “the FISA Materials”).

3. Based on the facts and considerations set forth below, I hereby claim that it would harm the national security of the United States to disclose or hold an adversary hearing with respect to the FISA Materials. The United States will be submitting the relevant classified documents to this Court as part of a “Sealed Appendix,” so this Court may conduct an *in camera*, *ex parte* review of the legality of the FISA collection at issue. My Claim of Privilege also extends to the classified portions of any memoranda and briefs the Government may file in connection with this litigation and to any oral representations that may be made by the Government that reference the classified information contained in the FISA Materials.

4. In support of my Claim of Privilege, the United States is submitting to the Court for *in camera*, *ex parte* review the Declaration of Michael B. Steinbach, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation. Mr. Steinbach’s Declaration sets forth, in detail, the specific facts on which my Claim of Privilege is based. The Declaration of Mr. Steinbach is classified at the “TOP SECRET” level.

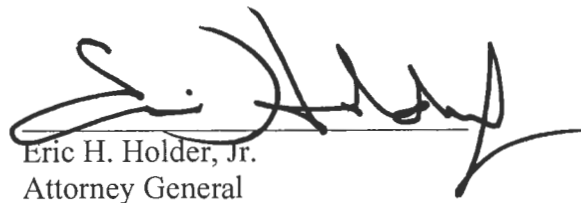
5. Relying on the facts set forth in Assistant Director Steinbach’s Declaration, I certify that the unauthorized disclosure of the FISA Materials that are classified at the “TOP SECRET” level could reasonably be expected to cause exceptionally grave damage to the

national security of the United States. I further certify that the unauthorized disclosure of the FISA materials that are classified at the "SECRET" level reasonably could be expected to cause serious damage to the national security of the United States. The FISA Materials contain sensitive and classified information concerning United States intelligence sources and methods and other information related to efforts of the United States to conduct counterterrorism investigations, including the manner and means by which those investigations are conducted. As a result, the unauthorized disclosure of the information could harm the national security interests of the United States.

6. I respectfully request that the Court treat the contents of the Sealed Appendix, for security purposes, in the same sensitive manner that the contents were treated in the submission to this Court, and to return the Sealed Appendix to the Department of Justice upon the disposition of the Defendant's Motion. The Department of Justice will retain the Sealed Appendix under the seal of the Court subject to any further orders of this Court or other courts of competent jurisdiction.

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 10th day of December 2014.


Eric H. Holder, Jr.
Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office, and that a copy of the foregoing *Declaration and Claim of Privilege of the Attorney General of the United States* was served on all parties listed in CM/ECF on December 12, 2014.

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/s/ Maria Wahl
Maria Wahl
Legal Assistant