

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NASSER AL-AULAQI, on his own)
behalf and as next friend)
acting on behalf of)
ANWAR AL-AULAQI)
)
Plaintiff,) Civ. A. No. 10-cv-1469
) (JDB)
v.)
)
BARACK H. OBAMA, President of the)
United States,)
ROBERT M. GATES, Secretary of)
Defense,)
LEON E. PANETTA, Director, Central)
Intelligence Agency)
(in their official capacities))
)
Defendants.)

**UNCLASSIFIED DECLARATION IN SUPPORT OF
FORMAL CLAIM OF STATE SECRETS PRIVILEGE
BY JAMES R. CLAPPER, DIRECTOR OF NATIONAL INTELLIGENCE**

I, JAMES R. CLAPPER, hereby declare and state:

1. I am the Director of National Intelligence (DNI), and have served in this capacity since August 9, 2010. In my capacity as the DNI, I oversee the United States Intelligence Community and serve as the principal intelligence advisor to the President. Prior to serving as the DNI, I served as the Director of the Defense Intelligence Agency from 1992 to 1995, the Director of the National Geospatial-Intelligence Agency from 2001 to 2006, and the Under Secretary of Defense for Intelligence from 2007 to 2010, where I served as the principal

staff assistant and advisor to the Secretary and Deputy Secretary of Defense on intelligence, counterintelligence, and security matters for the Department of Defense. In my capacity as the Under Secretary of Defense for Intelligence, I simultaneously served as the Director of Defense Intelligence for the DNI.

2. Through the exercise of my official duties, I have been advised of this litigation and have reviewed the complaint filed by the plaintiff. I have also reviewed the public and the classified *in camera*, *ex parte* declarations of the Director of the Central Intelligence Agency (CIA), Leon E. Panetta (hereinafter "Panetta Declaration"). I make the following statements based upon my personal knowledge and on information made available to me in my official capacity.

I. Purpose of This Declaration

3. The purpose of this declaration is to formally assert the state secrets privilege as well as a statutory privilege under the National Security Act of 1947, 50 U.S.C. § 403-1(i)(1), in order to protect from disclosure intelligence information about al-Qaeda, al-Qaeda in the Arabian Peninsula (AQAP), and Anwar al-Aulaqi, as well as the sources and methods underlying that information that may be implicated by the allegations in the complaint or otherwise at risk of unauthorized disclosure in this case. Disclosure of the

information covered by these privilege claims reasonably could be expected to cause damage, up to and including exceptionally grave damage, to the national security of the United States.

4. I have also executed a classified declaration for the Court's *in camera*, *ex parte* review which further sets forth the privileged information and the bases for my privilege assertions.

II. DNI Background and Statutory Authorities

5. Congress created the position of the Director of National Intelligence in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the United States Intelligence Community and as the principal advisor to the President and the National Security Council. 50 U.S.C. § 403(b)(1), (2).

6. The United States Intelligence Community includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized

national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with the analysis of intelligence information; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the Intelligence Community. See 50 U.S.C. § 401a(4).

7. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended, 50 U.S.C. § 403-1. Among other responsibilities, under the direction of the President, the DNI oversees coordination between elements of the intelligence community and the intelligence or security services of foreign governments or international organizations on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means. 50 U.S.C. § 403(k).

8. In addition, the National Security Act of 1947, as amended, states that "the Director of National Intelligence

shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 403-1(i)(1). By this language Congress expressed its determination that disclosure of intelligence sources and methods is potentially harmful and directed the DNI to protect them.

9. By virtue of my position as DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entity of the United States. 50 U.S.C. § 403-1(b).

10. As the DNI and pursuant to Executive Order 13526, as amended, 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.

III. Plaintiff's Allegations

11. Plaintiff in this case, Nasser Al-Aulaqi, alleges that both the CIA and Department of Defense (DoD) are involved in authorizing, planning, and carrying out targeted killings, including of U.S. citizens, outside the context of armed conflict. Compl. ¶ 1, 13. Plaintiff further alleges that the United States has not explained on what basis individuals are allegedly added to "kill lists," or the circumstances in which this alleged claimed authority will be exercised. Compl. ¶ 16.

12. Plaintiff further alleges that defendants have authorized the use of lethal force against his son, Anwar al-Aulaqi. Compl. ¶ 19, 20. Plaintiff claims that defendants added al-Aulaqi to lethal targeting lists maintained by the CIA and DoD after a closed executive process utilizing secret criteria that determine whether a U.S. citizen can be targeted for lethal action. Compl. ¶ 21. The plaintiff asks the Court to enjoin defendants from intentionally killing his son unless he presents a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threat. Id., Prayer for Relief ¶ (c). Plaintiff asks the Court to order defendants to disclose the alleged secret criteria used in determining whether to carry out the alleged lethal force at issue. Id., Prayer for Relief ¶ (d).

IV. Public Information Related to Anwar Al-Aulaqi

13. Anwar Al-Aulaqi is a dual U.S.-Yemeni citizen and a leader of AQAP, a Yemen-based terrorist group that has claimed responsibility for numerous terrorist acts against Saudi, Korean, Yemeni, and U.S. targets since January 2009. These include a March 2009 suicide bombing against South Korean tourists in Yemen, the August 2009 attempt to assassinate Saudi Prince Muhammad bin Nayif, the December 25, 2009 failed mid-air bombing of Northwest Airlines Flight 253 from Amsterdam to

Detroit, Michigan, and the April 26, 2010 attempted assassination of the United Kingdom's Ambassador to Yemen in Sanaa.

14. Anwar Al-Aulaqi has pledged an oath of loyalty to AQAP emir Nasir al-Wahishi, and is playing a key role in setting the strategic direction for AQAP. Al-Aulaqi has also recruited individuals to join AQAP, facilitated training at camps in Yemen in support of acts of terrorism, and helped focus AQAP's attention on planning attacks on U.S. interests.

15. Since late 2009, Al-Aulaqi has taken on an increasingly operational role in AQAP, including preparing Umar Farouk Abdulmutallab, who attempted to detonate an explosive device aboard a Northwest Airlines flight from Amsterdam to Detroit on Christmas Day 2009, for his operation. In November 2009, while in Yemen, Abdulmutallab swore allegiance to the emir of AQAP and shortly thereafter received instructions from al-Aulaqi to detonate an explosive device aboard a U.S. airplane over U.S. airspace.

16. On May 23, 2010, the official media arm of AQAP, al-Malahim Media Production, posted a 45-minute video of what is described as an interview with Anwar al-Aulaqi. In the video, the interviewee, whom the Intelligence Community assesses is Anwar al-Aulaqi, calls for jihad against America, praises the actions of Fort Hood shooter Major Nidal Hasan and Christmas Day

bomber Umar Farouk Abdulmutallab, and justifies the killing of U.S. civilians, including children. He also states that he is not a fugitive and declares he has no intention of turning himself in to America.

17. In a September 22, 2010 hearing before the Senate Homeland Security and Governmental Affairs Committee, Director of the National Counterterrorism Center Michael Leiter discussed the terrorist threat to the United States posed by al-Qaeda, AQAP, and U.S. citizens and residents inspired by al-Qaeda. Among other things, Director Leiter explained that Anwar al-Aulaqi's familiarity with the West and his role in AQAP are key concerns for the U.S. effort to combat terrorism at home and abroad.

V. Assertion of the State Secrets and Statutory Privilege

18. Despite the fact that some limited information related to al-Qaeda, AQAP and Anwar al-Aulaqi has been made public by the U.S. Government, Plaintiff's allegations in this case implicate other sensitive intelligence information that must be protected from disclosure. Therefore, I am asserting privilege over classified intelligence information, assessments, and analysis prepared, obtained, or under the control of any entity within the U.S. Intelligence Community concerning al-Qaeda, AQAP or Anwar al-Aulaqi that may be implicated by this lawsuit. This includes 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."

19. Specifically, I hereby assert the state secrets and DNI statutory privileges over information that falls within the following categories, the disclosure of which would result in damage, up to and including exceptionally grave damage, to the national security of the United States:

A. (U) Intelligence information concerning al-Qaeda and the sources and methods for acquiring that information.

B. (U) Intelligence information concerning AQAP and the sources and methods for acquiring that information.

C. (U) Intelligence information concerning Anwar al-Aulaqi and the sources and methods for acquiring that information.

VI. Harm of Disclosure

20. I described in my classified declaration, submitted for *in camera*, *ex parte* review, the harms that would be associated with a disclosure of the information subject to this privilege assertion. In general, unclassified terms, the disclosure of intelligence information concerning al-Qaeda, AQAP, and Anwar al-Aulaqi would reveal to these terrorist organizations not only what information has been obtained by the Intelligence Community, but the sources and methods by which such intelligence was obtained. This, in turn, would provide terrorists with key insights for adjusting their

activities based on what information is already known to the U.S., and taking steps to protect information about future plots. Either result could cause exceptionally grave harm to national security by, for example, compromising existing investigations or eliminating the sources from which information on terrorist plots may be gathered. For these reasons, I assert privilege to protect intelligence information implicated by the allegations in this case concerning al-Qaeda, AQAP, and Anwar al-Aulaqi.

21. In connection with these privilege assertions, I have considered the extent to which more could be said on the public record to describe the information subject to my claim of privilege and the harms to national security that would result from disclosure of the privileged information. After careful consideration, I have determined that no further information regarding the privileged information or harms at stake could safely be disclosed on the public record without revealing the very information I seek to protect. Accordingly, a full description of the information protected and the bases for my privilege determinations are contained in my classified declaration, which is submitted for this Court's *in camera*, *ex parte* review. Should the court require additional information concerning my privilege claims, I respectfully request an opportunity to provide such additional

information prior to the entry of any ruling regarding my privilege claims.

VII. Conclusion

22. For the reasons set forth above, I respectfully request that the Court uphold my assertion of the state secrets privilege and the DNI's statutory privilege assertion and exclude the privileged information from this case.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of September, 2010.

A handwritten signature in black ink, appearing to read "James R. Clapper", is written over a horizontal line.

James R. Clapper
Director of National Intelligence

EXHIBIT 2



Office of the Attorney General
Washington, D. C. 20530

September 23, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
MEMORANDUM FOR THE HEADS OF DEPARTMENT COMPONENTS

FROM:  THE ATTORNEY GENERAL

SUBJECT: Policies and Procedures Governing Invocation of the State Secrets Privilege

I am issuing today new Department of Justice policies and administrative procedures that will provide greater accountability and reliability in the invocation of the state secrets privilege in litigation. The Department is adopting these policies and procedures to strengthen public confidence that the U.S. Government will invoke the privilege in court only when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests. The policies and procedures set forth in this Memorandum are effective as of October 1, 2009, and the Department shall apply them in all cases in which a government department or agency thereafter seeks to invoke the state secrets privilege in litigation.

1. Standards for Determination

A. Legal Standard. The Department will defend an assertion of the state secrets privilege ("privilege") in litigation when a government department or agency seeking to assert the privilege makes a sufficient showing that assertion of the privilege is necessary to protect information the unauthorized disclosure of which reasonably could be expected to cause significant harm to the national defense or foreign relations ("national security") of the United States. With respect to classified information, the Department will defend invocation of the privilege to protect information properly classified pursuant to Executive Order 12958, as amended, or any successor order, at any level of classification, so long as the unauthorized disclosure of such information reasonably could be expected to cause significant harm to the national security of the United States. With respect to information that is nonpublic but not classified, the Department will also defend invocation of the privilege so long as the disclosure of such information reasonably could be expected to cause significant harm to the national security of the United States.

B. Narrow Tailoring. The Department's policy is that the privilege should be invoked only to the extent necessary to protect against the risk of significant harm to national security. The Department 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 the risk of significant harm to national security.

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C. Limitations. The Department will not defend an invocation of the privilege in order to: (i) conceal violations of the law, inefficiency, or administrative error; (ii) prevent embarrassment to a person, organization, or agency of the United States government; (iii) restrain competition; or (iv) prevent or delay the release of information the release of which would not reasonably be expected to cause significant harm to national security.

2. Initial Procedures for Invocation of the Privilege

A. Evidentiary Support. A government department or agency seeking invocation of the privilege in litigation must submit to the Division in the Department with responsibility for the litigation in question¹ a detailed declaration based on personal knowledge that specifies in detail: (i) the nature of the information that must be protected from unauthorized disclosure; (ii) the significant harm to national security that disclosure can reasonably be expected to cause; (iii) the reason why unauthorized disclosure is reasonably likely to cause such harm; and (iv) any other information relevant to the decision whether the privilege should be invoked in litigation.

B. Recommendation from the Assistant Attorney General. The Assistant Attorney General for the Division responsible for the matter shall formally recommend in writing whether or not the Department should defend the assertion of the privilege in litigation. In order to make a formal recommendation to defend the assertion of the privilege, the Assistant Attorney General must conclude, based on a personal evaluation of the evidence submitted by the department or agency seeking invocation of the privilege, that the standards set forth in Section 1(a) of this Memorandum are satisfied. The recommendation of the Assistant Attorney General shall be made in a timely manner to ensure that the State Secrets Review Committee has adequate time to give meaningful consideration to the recommendation.

3. State Secrets Review Committee

A. Review Committee. A State Secrets Review Committee consisting of senior Department of Justice officials designated by the Attorney General will evaluate the

¹ The question whether to invoke the privilege typically arises in civil litigation. Requests for invocation of the privilege in those cases shall be addressed to the Civil Division. The question whether to invoke the privilege also may arise in cases handled by the Environment and Natural Resources Division (ENRD), and requests for invocation of the privilege shall be addressed to ENRD in those instances. It is also possible that a court may require the Government to satisfy the standards for invoking the privilege in criminal proceedings. *See United States v. Araf*, 533 F.3d 72, 78-80 (2d Cir. 2008); *but see United States v. Rosen*, 557 F.3d 192, 198 (4th Cir. 2009). In such instances, requests to submit filings to satisfy that standard shall be directed to the National Security Division.

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Assistant Attorney General's recommendation to determine whether invocation of the privilege in litigation is warranted.

B. Consultation. The Review Committee will consult as necessary and appropriate with the department or agency seeking invocation of the privilege in litigation and with the Office of the Director of National Intelligence. The Review Committee must engage in such consultation prior to making any recommendation against defending the invocation of the privilege in litigation.

C. Recommendation by the Review Committee. The Review Committee shall make a recommendation to the Deputy Attorney General, who shall in turn make a recommendation to the Attorney General.² The recommendations shall be made in a timely manner to ensure that the Attorney General has adequate time to give meaningful consideration to such recommendations.

4. Attorney General Approval

A. Attorney General Approval. The Department will not defend an assertion of the privilege in litigation without the personal approval of the Attorney General (or, in the absence or recusal of the Attorney General, the Deputy Attorney General or the Acting Attorney General).

B. Notification to Agency or Department Head. In the event that the Attorney General does not approve invocation of the privilege in litigation with respect to some or all of the information a requesting department or agency seeks to protect, the Department will provide prompt notice to the head of the requesting department or agency.

C. Referral to Agency or Department Inspector General. If the Attorney General concludes that it would be proper to defend invocation of the privilege in a case, and that invocation of the privilege would preclude adjudication of particular claims, but that the case raises credible allegations of government wrongdoing, the Department will refer those allegations to the Inspector General of the appropriate department or agency for further investigation, and will provide prompt notice of the referral to the head of the appropriate department or agency.

² In civil cases, the review committee's recommendation should be made through the Associate Attorney General to the Deputy Attorney General, who shall in turn make a recommendation to the Attorney General.

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5. Reporting to Congress

The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege.

6. Classification Authority

The department or agency with classification authority over information potentially subject to an invocation of the privilege at all times retains its classification authority under Executive Order 12958, as amended, or any successor order.

7. No Substantive or Procedural Rights Created

This policy statement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

EXHIBIT 3

Statement for Record
Senate Homeland Security and Government Affairs
Committee

**“Nine Years after 9/11: Confronting the Terrorist
Threat to the Homeland”**
22 September 2010



Michael Leiter
Director of the National Counterterrorism Center

**Statement for the Record
Senate Homeland Security and Governmental Affairs Committee**

**“Nine Years after 9/11: Confronting the Terrorist Threat to the Homeland”
22 September 2010**

**Michael Leiter
Director of the National Counterterrorism Center**

Introduction

Chairman Lieberman, Ranking Member Collins, distinguished Members of the Committee, thank you for the opportunity today to discuss the current state of the terrorist threat to the Homeland and the U.S. Government’s efforts to address the threat. I am pleased to join Secretary of Homeland Security Janet Napolitano and Director of the Federal Bureau of Investigation (FBI) Robert Mueller—two of the National Counterterrorism Center’s (NCTC) closest and most critical partners.

Nature of the Terrorist Threat

During the past year our nation has dealt with the most significant developments in the terrorist threat to the Homeland since 9/11. The three attempted Homeland attacks during the past year from overseas-based groups—including Pakistan-based al-Qa’ida’s plan to attack the New York City subway one year ago, its regional affiliate al-Qa’ida in the Arabian Peninsula’s (or AQAP’s) attempt to blow up an airliner over Detroit last Christmas, and al-Qa’ida’s closest ally Tehrik-e-Taliban Pakistan’s (or TTP’s) attempt to bomb Times Square in May—in addition to two lone actor attacks conducted by homegrown extremists Carlos Bledsoe and Nidal Hassan, surpassed the number and pace of attempted attacks during any year since 9/11. The range of al-Qa’ida core, affiliated, allied, and inspired US citizens and residents plotting against the Homeland during the past year suggests the threat against the West has become more complex and underscores the challenges of identifying and countering a more diverse array of Homeland plotting.

Al-Qa’ida’s affiliates’ and allies’ increasing ability to provide training, guidance, and support for attacks against the United States makes it more difficult to anticipate the precise nature of the next Homeland attack and determine from where it might come. Regional affiliates and allies can compensate for the potentially decreased willingness of al-Qa’ida in Pakistan—the deadliest supplier of such training and guidance—to accept and train new recruits. Additional attempts, even if unsuccessful, by al-Qa’ida’s affiliates and allies to attack the US—particularly attempts in the Homeland—could attract the attention of more Western recruits, thereby increasing those groups’ threat to the Homeland. Even failed attacks, such as AQAP’s and TTP’s attempts, further al-Qa’ida’s goal of fomenting global jihad against the West and demonstrate that some affiliates and allies are embracing this vision. The impact of the attempted attacks during the past year suggests al-Qa’ida, and its affiliates and allies, will attempt to conduct smaller-scale attacks targeting the Homeland but with greater frequency.

Today al-Qa’ida in Pakistan is at one of its weakest points organizationally. We have restricted their freedom of movement and reduced their sense of security in the Federally Administered Tribal Areas (FATA). However, the group has proven its resilience over time and remains a capable and determined enemy, harnessing most of its capabilities and resources on plotting attacks against the West. The threat

to the Homeland is compounded by the ideologically similar but operationally distinct plotting against the US by al-Qa'ida's Pakistan-based allies, regional affiliates, and sympathizers worldwide, including radicalized US persons, who may not receive training, direction, or support from al-Qa'ida senior leaders in the FATA but embrace al-Qa'ida's global violent extremist vision.

The spike in homegrown violent extremist activity during the past year is indicative of a common cause that rallies independent extremists to want to attack the Homeland. Key to this trend has been the development of a US-specific narrative that motivates individuals to violence. This narrative—a blend of al-Qa'ida inspiration, perceived victimization, and glorification of past plotting—has become increasingly accessible through the Internet, and English-language websites are tailored to address the unique concerns of US-based extremists. However, radicalization among US-based extremists remains a very unique process based on each individual's personal experiences and motivating factors.

Pakistan: The Current Threat from al-Qa'ida and its Allies

Al-Qa'ida in Pakistan is weaker today than at any time since the late 2001 onset of Operation Enduring Freedom in Afghanistan. Sustained US-Pakistani counterterrorism (CT) pressure against al-Qa'ida and its militant allies in the FATA during the past nine years have reduced the group's safehaven and forced it to adapt to mitigate personnel losses.

- During the past 19 months, al-Qa'ida's base of operations in the FATA has been restricted considerably, limiting their freedom of movement and ability to operate. At the same time, nearly a dozen al-Qa'ida leaders—and hundreds of their extremist allies—have been killed or captured worldwide. Perhaps most significantly, al-Qa'ida lost its general manager, Shaykh Sa'id al-Masri, and its chief of operations for Afghanistan.

Despite these CT successes, al-Qa'ida in Pakistan remains intent on attacking the West and continues to prize attacks against the US Homeland and our European allies above all else. Al-Qa'ida is persistently seeking, training, and deploying operatives to advance attacks against targets in the West, while at the same time encouraging sympathizers worldwide—including radicalized US citizens and residents—to do what they can to further al-Qa'ida's violent extremist agenda.

Al-Qa'ida's senior-most leaders—Usama bin Ladin and Ayman al-Zawahiri—maintain al-Qa'ida's unity and strategic focus on US targets, especially prominent political, economic, and infrastructure targets.

- Europe is a primary focus of al-Qa'ida plotting. Five disrupted plots during the past four years—including a plan to attack airliners transiting between the UK and US, a credible plot in Germany, disrupted cells in the UK and Norway, and the disrupted plot to attack a newspaper in Denmark—demonstrate Pakistan-based al-Qa'ida's steadfast intent to attack the US and our allies.
- Al-Qa'ida's propaganda efforts are meant to inspire additional attacks by motivating sympathizers worldwide to undertake efforts similar to Nidal Hassan's attack on Fort Hood last fall. Al-Qa'ida will continue to use propaganda to encourage like-minded extremists to conduct smaller-scale independent attacks that are inspired, but not overseen or directed, by the group.

One of al-Qa'ida's key allies in the FATA, **Tehrik-e-Taliban Pakistan** (TTP), is an alliance of militant groups that formed in 2007 with the intent of imposing its interpretation of shari'a law in Pakistan and expelling Coalition troops from Afghanistan. TTP leaders maintain close ties to senior al-Qa'ida leaders,

providing critical support to al-Qa'ida in the FATA and sharing some of the same global violent extremist goals.

- TTP since 2008 has repeatedly threatened to attack the US Homeland, and the failed attack on Times Square in May by Faisal Shahzad—an American who trained with and received financial support from TTP in Pakistan—demonstrated the group's capability to move a Homeland attack to the execution phase.
- Following the attempted attack on Times Square, TTP warned that operatives were located in the US and threatened continued attacks against US facilities in Pakistan. TTP also played a significant role in the suicide bombing in Khowst, Afghanistan that killed seven Americans and also was responsible for a complex attack conducted against the US Consulate in Peshawar earlier (April) this year.

Other Pakistan-based al-Qa'ida allies, the **Haqqani** network and **Harakat-ul Jihad Islami (HUJI)**, have close ties to al-Qa'ida. Both groups have demonstrated the intent and capability to conduct attacks against US persons and targets in the region, and we are looking closely for any indicators of attack planning in the West.

- The Haqqani network is based in the FATA and claimed responsibility for the January 2008 attack against a hotel in Kabul that killed six, including one American, and has coordinated and participated in cross-border attacks against US and Coalition forces in Afghanistan.
- HUJI has collaborated with al-Qa'ida on attacks and training for HUJI members. In January 2009, a federal grand jury indicted HUJI commander Mohammad Ilyas Kashmiri in absentia for a disrupted terrorist plot against a newspaper in Denmark. The group also has been involved in multiple, high-casualty attacks, including an operation against a mosque in Hyderabad, India in May 2007 that killed 16, and an attack against Pakistani intelligence and police facilities in Lahore in 2009 that killed 23.

Pakistan-based Sunni extremist group **Lashkar-e-Tayyiba (LT)** poses a threat to a range of interests in South Asia. Its attacks in Kashmir and India have had a destabilizing effect on the region, increasing tensions and brinkmanship between New Delhi and Islamabad. The group's attack two years ago in Mumbai resulted in US and Western casualties, and the group continues to plan attacks in India that could harm US citizens and damage US interests. LT's involvement in attacks in Afghanistan against US and Coalition forces and provision of support to the Taliban and al-Qa'ida extremists there pose a threat to US and Coalition interests. Although LT has not previously conducted attacks in the West, LT—or LT-trained individuals—could pose a direct threat to the Homeland and Europe, especially should they collude with al-Qa'ida operatives. We also are concerned that next month's Commonwealth Games in New Delhi will be an appealing target for LT due to their political and economic significance for India, as well as the heightened media exposure that will accompany the event.

The Increasing Threat from al-Qa'ida's Regional Affiliates

Al-Qa'ida in the Arabian Peninsula. We witnessed the reemergence of AQAP in early 2009 and continue to view Yemen as a key battleground and potential regional base of operations from which AQAP can plan attacks, train recruits, and facilitate the movement of operatives.

- AQAP has orchestrated many attacks in Yemen and expanded external operations to Saudi Arabia and the Homeland, including the assassination attempt on a Saudi Prince last August and the attempted airliner attack last Christmas—representing the first regional affiliate’s Homeland attack that moved to the execution phase.
- Dual US-Yemeni citizen and Islamic extremist ideologue Anwar al-Aulaqi played a significant role in the attempted airliner attack and was designated in July as a specially designated global terrorist under E.O. 13224 by the United States Government and the UN’s 1267 al Qa’ida and Taliban Sanctions Committee. Aulaqi’s familiarity with the West and role in AQAP remain key concerns for us.
- AQAP’s use of a single operative using a prefabricated explosive device to conduct a Homeland attack limited their resource commitments and visible signatures that often enable us to detect and disrupt plotting efforts.

Al-Qa’ida Operatives in Somalia and Al-Shabaab. East Africa remains a key locale for al-Qa’ida associates and the Somalia-based terrorist and insurgent group al-Shabaab. Some al-Shabaab leaders share al-Qa’ida’s ideology and publicly have praised Usama bin Ladin and requested further guidance from the group, although Somali nationalist themes are also prevalent in their public statements. Al-Shabaab leaders have cooperated closely with a limited number of East Africa-based al-Qa’ida operatives and the Somalia-based training program established by al-Shabaab and now-deceased al-Qa’ida operative Saleh Nabhan, continues to attract hundreds of violent extremists from across the globe, to include dozens of recruits from the United States. At least 20 US persons—the majority of whom are ethnic Somalis—have traveled to Somalia since 2006 to fight and train with al-Shabaab. In the last two months, four US citizens of non-Somali descent were arrested trying to travel to Somalia to join al-Shabaab. Omar Hammami, a US citizen who traveled to Somalia in 2006 and now is one of al-Shabaab’s most prominent foreign fighters, told the New York Times in January that the United States was a legitimate target for attack. The potential for Somali trainees to return to the United States or elsewhere in the West to launch attacks remains of significant concern.

- Al-Shabaab claimed responsibility for its first transnational attack—the July suicide bombings in Kampala, Uganda, which killed 76 people including one American. Al-Shabaab leaders have vowed additional attacks in the region. Al-Shabaab was also likely responsible for five coordinated suicide car bombings—using its first known US suicide bomber—in October 2008, which targeted the United Nations and local government targets in northern Somalia, further demonstrating its capabilities and expanded regional threat.

Al-Qa’ida in the Lands of the Islamic Maghreb. AQIM is a persistent threat to US and other Western interests in North and West Africa, primarily conducting kidnap for ransom operations and small-arms attacks, though the group’s execution in July of a French hostage and first suicide bombing attack in Niger earlier this year punctuate AQIM’s lethality and attack range. Disrupted plotting against France and publicized support of Nigerian extremists reveal the group’s continuing aspirations to expand its influence. Sustained Algerian efforts against AQIM have significantly degraded the organization’s ability to conduct high-casualty attacks in the country. While AQIM remains a threat in the northern Kabylie region, those efforts have compelled AQIM to shift its operational focus from northern Algeria to the vast, ungoverned Sahel region in the South. Multi-national CT efforts—including a joint French-Mauritanian raid in July against an AQIM camp—will increase regional pressure to disrupt the group.

Al-Qa'ida in Iraq. Ongoing CT successes against AQI—to include the deaths of the group's top two leaders this year in a joint Iraqi/US military operation—have continued to pressure the organization and hinder its external ambitions. Despite these ongoing setbacks, AQI remains a key al-Qa'ida affiliate in the region and has maintained a steady attack tempo within Iraq, serving as a disruptive influence in the Iraqi Government formation process and continuing to threaten Coalition Forces. While AQI's leaders continue to publicly threaten to attack the West, to include the Homeland, their ability to do so has been diminished, although not eliminated.

Homegrown Sunni Extremist Activity Spikes

Homegrown Sunni extremists pose an elevated threat to the Homeland. Plots disrupted in New York, North Carolina, Arkansas, Alaska, Texas, and Illinois during the past year were unrelated operationally, but are indicative of a collective subculture and a common cause that rallies independent extremists to want to attack the Homeland. Key to this trend has been the development of a US-specific narrative that motivates individuals to violence. This narrative—a blend of al-Qa'ida inspiration, perceived victimization, and glorification of past homegrown plotting—addresses the unique concerns of US-based extremists.

- Nidal Hassan's killing of soldiers at Fort Hood and Carlos Leon Bledsoe's attack targeting a recruiting station in Little Rock, Arkansas in 2009 serve as stark examples of lone actors inspired by the global violent extremist movement who attacked without oversight or guidance from overseas-based al-Qa'ida elements.
- Homegrown violent extremists continue to act independently and have yet to demonstrate the capability to conduct sophisticated Homeland attacks.
- Increasingly sophisticated English-language jihadist propaganda remains easily downloadable via the Internet and provides young extremists with guidance to carry out Homeland attacks. English-language discussion for a also foster a sense of community and further indoctrinate new recruits, both of which can lead to increased levels of violent activity.
- The rising profiles of US citizens within overseas terrorist groups—such as Omar Hammami in al-Shabaab and Anwar al-Aulaqi in AQAP—may also provide young extremists with American faces as role models in groups that in the past may have appeared foreign and inaccessible.

Al-Qa'ida and Affiliates Sustain Media Campaign

Al-Qa'ida senior leaders have issued significantly fewer video and audio statements thus far in 2010 than during the same time period last year, but these statements continue to provide valuable insight into the group's strategic intentions. Public al-Qa'ida statements rarely contain a specific threat or telegraph attack planning, but a new theme this year included advocating lone-operative attacks in the wake of the Fort Hood shootings.

- In addition to calls for Muslims in the West to exercise independent initiative to conduct attacks, al-Qa'ida senior leaders this year have condemned US outreach to Muslims as deceptive and praised alleged successes of affiliates—themes that will continue in future statements.

- AQAP released *Inspire*—the group’s first English-language online magazine published by its media wing Sada al-Malahim—which included tips for aspiring extremists on bomb-making, traveling overseas, email encryption, and a list of individuals to assassinate. This magazine appears designed to resonate with Westerners and probably reflects extremists’ continued commitment to attack US interests.

WMD-Terrorism Remains a Concern

The threat of WMD terrorism to the Homeland remains a grave concern. Documents recovered in 2001 in Afghanistan indicated that prior to 9/11, al-Qa’ida was pursuing a biological and chemical weapons program and was interested in nuclear weapons. Since 9/11, we have successfully disrupted these and other terrorist efforts to develop a WMD capability. However, al-Qa’ida and other groups continue to seek such a capability for use against the Homeland and US interests overseas. While terrorists face technical hurdles to developing and employing more advanced WMD, the consequences of a successful attack force us to consider every possible threat against the Homeland, even those considered low probability.

Hizballah Remains Capable of Attacking US, Western Interests

While not aligned with al-Qa’ida, Lebanese Hizballah remains capable of conducting terrorist attacks on US and Western interests, particularly in the Middle East. It continues to train and sponsor terrorist groups in Iraq that threaten the lives of US and Coalition forces and supports Palestinian terrorist groups’ efforts to attack Israel and jeopardize the Middle East peace process. Although its primary focus is Israel, it would likely consider attacks on US interests, to include the Homeland, if it perceived a direct threat from the United States to itself or Iran. Hizballah’s Secretary General, in justifying the group’s use of violence against fellow Lebanese citizens last year, characterized any threat to Hizballah’s armed status and its independent communications network as redlines.

Coordination of Counterterrorism Efforts

Support to the National Security Staff (NSS). NCTC’s strategic planning efforts follow the policy direction of the President and the NSS to provide government-wide coordination of planning and integration of department and agency actions involving “all elements of national power,” against terrorism including diplomatic, economic, military, intelligence, homeland security, and law enforcement activities within and among agencies. NCTC helps develop plans and processes to support interagency implementation and provide input to the NSS to evaluate progress against objectives and refine plans as necessary. NCTC also works in support of the NSS and with our interagency partners to develop plans designed to disrupt and diminish the capability of terrorist organizations and their networks, and to eliminate identified regional safehavens. We also facilitate and host working-level discussions on key functional CT issues, such as countering terrorist use of the Internet and countering terrorism finance, to feed into NSS policy and strategy development.

NCTC’s support to NSS processes includes developing agreed “whole-of-government” strategic objectives, and facilitating coordination, integration and assessment of USG initiatives designed to achieve those objectives. In addition to developing plans and evaluating progress, we have built a unique relationship with OMB through which we help inform the President’s counterterrorism budget – ensuring that agreed priority areas are appropriately considered in the Federal budget request.

For all its plans, NCTC consistently examines the impact of USG CT efforts to understand if we are achieving the desired goals. NCTC's strategic impact assessments seek to provide a tangible and valid "feedback loop" to CT planners and policymakers to help refine CT plans, prioritize efforts, and ensure all elements of power are engaged to achieve our goals and objectives. From these assessments, we are able to identify, in part, needed policies, plans or actions to move us closer to our desired end-state.

WMD-T Planning. Recognizing the continued threat of WMD terrorism as a grave concern, NCTC supports the NSS efforts to ensure government-wide efforts to deter, deny, detect, and prevent terrorist acquisition or use of WMD. To this end, NCTC led the interagency effort to develop a National Action Plan for implementing Presidential Policy Directive-2, the National Strategy for Countering Biological Threats. NCTC also is coordinating efforts to monitor and track progress of commitments made at the April 2010 Nuclear Security Summit; and is facilitating the USG's updates to the President's Five Year Plan for Nuclear Forensics and Attribution and the associated WMD Attribution Policy Implementation Plan.

Global Engagement. NCTC continues to play a large role in interagency efforts to counter violent extremism (CVE), both overseas and at home. We integrate, coordinate, and assess U.S. Government programs that aim to prevent the emergence of the next generation of terrorists. Our focus is on both near and long-term efforts to undercut the terrorists' narrative, thereby minimizing the pool of people who would support violent extremism.

To do this, NCTC works with our colleagues in federal, state and local governments, with international partners, and with the private sector to integrate all elements of national power. For example, NCTC helps coordinate the Federal Government's engagement with Somali American communities. In this regard, NCTC has worked with national security agencies such as DHS and FBI, as well as non-traditional partners, such as the Department of Health and Human Services and Department of Education, facilitating their efforts to increase and improve outreach and engagement activities around the country. By supporting the community of interest, NCTC ensures a "whole of government" approach that is vital to addressing domestic radicalization. We also are supporting a forum for interagency counterparts to participate in and to collaborate on communication strategies and opportunities. As countering violent extremism is broader than CT-specific activities many departments and agencies have begun public outreach and engagement efforts on issues such as civil rights, education, charitable giving, and immigration policy.

While government has an important role, we view community institutions as the key players in countering radicalization; addressing radicalization requires community-based solutions that are sensitive to local dynamics and needs. Over the past year, NCTC has helped foster collaboration with community leaders involved in countering violent extremism to better understand how government can effectively partner with communities. It has become clear that government can play a significant role by acting as a convener and facilitator that informs and supports—but does not direct—community-led initiatives. Based on this, NCTC led the development of a Community Awareness Briefing that conveys unclassified information about the realities of terrorist recruitment in the Homeland and on the Internet. The briefing, which can be used by departments and agencies and has garnered very positive reactions, aims to educate and empower parents and community leaders to combat violent extremist narratives and recruitment. This briefing has been presented to Muslim community members and leaders around the country leveraging, when possible, existing U.S. Government engagement platforms such as DHS and FBI roundtables.

Information Sharing. While NCTC and its critical mission partners, including FBI and DHS, play a crucial role in countering and coordinating efforts to defeat terrorism threats against the Homeland, the success of this endeavor is largely dependent upon the close collaboration with our law enforcement and private sector partners at the local and state levels to maximize resources. NCTC and its mission partners have embraced information sharing, instituted new policies and procedures, and promoted an information-sharing culture—including the establishment of ITACG—to ensure that shared information is transformed into situational awareness for public safety officials at all levels to enhance their capabilities to quickly recognize and effectively respond to suspected terrorism and radicalization activities; and into actionable intelligence that can be used by Federal, state, tribal, and local law enforcement—as well as by those segments of the private sector that operate or own critical infrastructure and key resources—to protect the United States against terrorism, to enforce our laws, and to simultaneously protect our privacy and preserve our liberties.

Capabilities Reviews and Exercises. NCTC regularly hosts tabletop exercises to examine USG capabilities and identify gaps in our capacity to respond to a terrorist attack. Such exercises provide a mechanism to validate, or a foundation to develop, disruption plans and recommend solutions to minimize vulnerabilities. These exercises have been used in conjunction with threats emanating from the Homeland, Arabian Peninsula, and other regions. One example of such efforts is the table top in which we simulated a notional "Mumbai style" attack on the city of Chicago. That exercise and its associated lessons learned have been briefed in more than 20 State, Local, Federal, and international forums. It also formed the basis of a critical interagency agreement to smooth logistics and transportation issues related to our Federal response.

Looking Ahead from the Failed Bombing of Northwest Flight 253 on December 25, 2009.

Finally, I would like to highlight changes implemented at the Center since the failed terrorist attempt to bomb Detroit-bound Northwest Flight 253 on December 25, 2009. NCTC led IC efforts to implement the Director of National Intelligence's-Counterterrorism Master Action Plan in response to internal and White House-directed corrective actions. Among other things the plan clarified the CT responsibilities of IC analytic components and helped ensure the proper alignment of supplemental CT resources across the Community.

Next, we created analytic Pursuit Groups to focus, at a very granular level, on information that could lead to discovery of threats aimed against the Homeland or US interests abroad. The Pursuit Groups work with our IC partners to integrate efforts across the community to aggressively and exhaustively pursue high priority threats to resolution/disruption. We are also working with interagency partners to successfully implement the revamped USG watchlisting protocol, engage in a significant database scrub, and address the capability to further enhance the Terrorist Identities Datamart Environment (TIDE) to better support both watchlisting and analytic efforts.

Supporting these and other NCTC missions, we continue to develop an IT infrastructure to better meet the demands of the evolving threat: these include the development of a "CT data layer" to allow a "Google like" search as well as the capability to conduct "discovery" of non-obvious terrorist relationships. Finally, we have worked with Community partners on a range of legal, policy, technical and privacy issues that, once resolved, would allow expanded and appropriate access to this data. These are complex issues that require sophisticated analysis.

Conclusion

Chairman Lieberman and Ranking Member Collins, I want to conclude by once again recognizing this Committee for the role it played in the creation of the National Counterterrorism Center. Without your leadership, the strides we jointly made to counter the terrorist threat would not be possible. Your continued support is critical to the Center's mission to lead our nation's effort to combat terrorism at home and abroad by analyzing the threat, sharing that information with our partners, and integrating all instruments of national power to ensure unity of effort. I look forward to continuing our work together in the years to come.

EXHIBIT 4

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

2. 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. 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 U.S. armed forces implicated by the allegations in this case. As summarized in this public declaration and described further in my classified declaration submitted for the Court's *in camera, ex parte* review, 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. As the Secretary of Defense, 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.

I. ASSERTION OF THE STATE SECRETS PRIVILEGE

5. 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 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 military information that cannot be disclosed without causing serious harm to the national security of the United States. Accordingly, as set forth further below, 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. 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 analytic processes on which any such intelligence information is based;
- B. 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. 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.

II. HARM OF DISCLOSURE OF THE PRIVILEGED INFORMATION.

6. 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 analytic processes on which any such intelligence information is based. The United States, in a July 16, 2010 press release issued by the Department of Treasury, 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 of Northwest Airlines Flight 253 as it was landing in Detroit on December 25, 2009. *See* Declaration of Ben Wizner, Exhibit T. 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 the 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 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 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.

7. Second, I am asserting privilege over any information concerning possible military operations in Yemen and any criteria or procedures DoD may utilize in connection with such military operations. 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 operations 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 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 confirmation or denial of either prior or planned operations could seriously harm U.S. foreign relations.

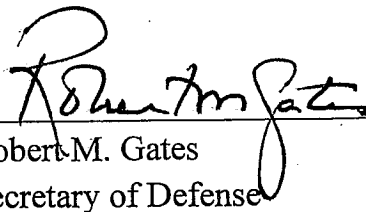
8. Third, I am asserting privilege over information concerning relations between DoD and the Government of Yemen, including on security, military or intelligence cooperation, and that government's counterterrorism efforts. The disclosure of information concerning cooperation between the United States and a foreign state, and specifically regarding any possible military operations in that foreign country, could lead to serious harm to national security, including by disrupting any confidential relations with a foreign government.

III. CONCLUSION

9. In sum, as the Secretary of Defense, I formally assert the military and state secrets privilege in order to protect our nation's security from damage, up to and including exceptionally grave damage. In connection with this assertion of the military and state secrets privilege, I have considered the extent to which the bases for my assertion could be filed on the public record. I have determined that no further information concerning these matters beyond what is in this unclassified declaration can be disclosed on the public record without revealing the very classified information I seek to protect. As noted, my separate classified declaration provides a more detailed explanation of the information and harms to national security. Should the Court require additional information concerning my claims of privilege, I respectfully request an opportunity to provide that information prior to the Court's ruling on my privilege assertion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of September 2010.



Robert M. Gates
Secretary of Defense

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NASSER AL-AULAQI, on his own)
behalf and as next friend)
acting on behalf of)
ANWAR AL AULAQI)
)
Plaintiff,) No. 1:10cv01469(JDB)
)
v.)
)
BARACK H. OBAMA, President of the)
United States,)
ROBERT M. GATES, Secretary of)
Defense,)
LEON E. PANETTA, Director, Central)
Intelligence Agency)
(in their official capacities))
)
Defendants.)

**DECLARATION AND FORMAL CLAIM OF
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES
BY LEON E. PANETTA, DIRECTOR, CENTRAL INTELLIGENCE AGENCY**

I, LEON E. PANETTA, hereby declare:

I. INTRODUCTION

1. I am the Director of the Central Intelligence Agency ("DCIA") and have served in this capacity since 13 February 2009.¹ As DCIA, I serve as the executive head of the CIA pursuant to the National Security Act of 1947.² In my capacity as DCIA, I lead the CIA and manage the Intelligence Community's

¹ Prior to serving as DCIA, I served as Chief of Staff to President William J. Clinton, from 1994 to 1997; Director of the Office of Management and Budget, from 1993 to 1994; Member of the U.S. House of Representatives from California's 17th District, from 1977 to 1993; and First Lieutenant in the U.S. Army from 1964 to 1966, for which I received the Army Commendation Medal.

² 50 U.S.C.A. § 403-4a (West Supp. 2010).

human intelligence and open source collection programs on behalf of the Director of National Intelligence ("DNI"), among other duties.³

2. Through the exercise of my official duties, I have been advised of this litigation and I have read the Complaint filed in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

3. The purpose of this declaration is to formally assert and claim the state secrets privilege, as well as relevant statutory privileges under section 102A(i)(1) of the National Security Act of 1947, as amended, and section 6 of the CIA Act of 1949, as amended, to protect intelligence sources, methods and activities that may be implicated by the allegations in the Complaint or otherwise at risk of disclosure in this case. Specifically, I am invoking the privilege over any information, if it exists, that would tend to confirm or deny any allegations in the Complaint pertaining to the CIA, as well as any other information implicated by Plaintiff's Complaint that would tend to expose any intelligence sources, methods or activities. Such information should be protected by the Court

³ Executive Order 12333, as amended, §§ 1.6-1.7, sets forth the duties of the DCIA. See 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25 (West Supp. 2010), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008).

and excluded from any use in this litigation. I make these claims of privilege in my capacity as the Director of the CIA and after deliberation and personal consideration of the matter. I do not make these claims lightly.

4. Furthermore, after deliberation and personal consideration, I have determined that the specific factual bases for my privilege assertions, detailed descriptions of the privileged information at issue, and other information relevant to my privilege assertion cannot be set forth on the public record without revealing the very information that I seek to protect and risking the very harm to U.S. national security that I seek to prevent. I have therefore separately submitted a classified, ex parte, in camera declaration for the Court's review.

5. It is my belief that my declarations adequately explain why this case cannot be litigated without risking or requiring the disclosure of classified and privileged intelligence information that must not be disclosed. Should the Court require additional information concerning my claims of privilege, I respectfully request an opportunity to provide such additional information prior to the entry of any ruling regarding my privilege claims.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of September, 2010.

A handwritten signature in black ink, appearing to read 'Leon E. Panetta', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

Leon E. Panetta
Director, Central Intelligence Agency