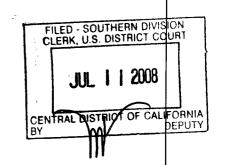
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United States of America

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UNITED STATES DISTRICT COURT

🕏 FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNTTED STATES OF AMERICA, Plaintiff,

SA CR No. 05-293(B)-¢J

(UNDER SEAL)

CHI MAK, et al.,

Defendants.

EX PARTE AND IN CAMERA DECLARATION OF JAY I. BRATT IN SUPPORT OF MOTION TO CONTINUE HEARING DATE AND TO SET NEW BRIEFING SCHEDULE

JUL 1 / 2008

Pursuant to 28 U.S.C. § 1746, Jay I. Bratt declares as follows:

I am the Chief of the Litigation Section of the Office of Intelligence, National Security Division, United States Department of Justice ("DOJ"). January 2007, I was appointed a Special Attorney to the Attorney General to investigate the possible leaks of classified information and grand jury information in certain publications written by William Gertz, which included an article by Mr. Gertz that appeared in The Washington Times on May 16, 2006, titled "New Charges Expected in Defense Data Theft Ring." In this role, I report to the Attorney General through the United CM

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States Attorney for the District of Columbia and the Assistant Attorney General for the National Security Division. At the time of my appointment, I was an Assistant United States Attorney in the District of Columbia, and I have maintained responsibility for this matter in my current position. I am a member of good standing of the bar of the State of Illinois, and I have been an attorney with DOJ since July 1990.

- 2. I submit this declaration ex parte and in camera because it contains information pertaining to matters that may occur before the grand jury in the government's ongoing investigation of the leaks, because it references internal deliberations within DOJ, and because it references prior communications with the Court that remain under seal. I do not address anything related to the merits of the arguments that Mr. Gertz has advanced in support of his motion to quash the subpoena that the Court issued to him on April 30, 2008.
- 3. Since assuming responsibility for this matter, I have met with the Court on three occasions to provide updates on the progress of the government's investigation. These meetings occurred on February 16, 2007, July 24, 2007, and April 21, 2008. At each of the meetings, one topic of discussion was the Court's issuing a subpoena for Mr. Gertz to testify in the

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event that the government's investigation did not reveal the source of the leak of the grand jury information in the May 16, 2006, article by Mr. Gertz and the government had not yet received authorization to subpoena Mr. Gertz to the grand jury to reveal his source(s) for the information. During the July 24, 2007, meeting, the Court inquired whether, if it issued a subpoena for Mr. Gertz, the government would be able to be a full participant in any resulting proceedings. I agreed to provide the Court with an answer to that question.

In the fall of 2007, I began the process of 4. getting authorization for a grand jury subpoena for Mr. Pursuant to 28 C.F.R § 50.10, any subpoena to a member of the media requires the approval of the Attorney General. In my submission to the component within DOJ responsible for reviewing media subpoenas, I requested authority both to subpoena Mr. Gertz to the grand jury to question him about the source(s) of the leaked information and to participate in any proceeding that the Court initiated to subpoena Mr. Gertz. respect to the latter request, the component advised me that Attorney General approval was not necessary when the court initiated the proceeding and sought to compel a member of the media to testify. I asked for clarification as to whether my ability to participate

in the court proceeding would include questioning the reporter at any hearing, responding to a motion to quash the subpoena, handling any resulting contempt proceedings, and handling any appeals. I was informed that I could participate to the extent described in the preceding sentence. I advised the persons to whom I report of this decision. I was subsequently authorized to inform the Court that the government could participate fully in any proceeding that resulted from a subpoena that the Court issued to Mr. Gertz. I so informed the Court during our meeting on April 21, 2008.

- 5. On April 30, 2008, the Court issued its subpoena to Mr. Gertz. On June 5, 2008, Mr. Gertz, through counsel, filed a motion to quash the Court's subpoena.
- 6. I and another DOJ attorney prepared a response to Mr. Gertz's motion. In advance of the original due date for the government's brief, we circulated the response among our superiors and among persons within DOJ who have an expertise in this area, in part to ensure that the positions we were taking were consistent with those advanced in other cases. We were advised that this matter raises a number of issues that require further consideration within DOJ. These issues include whether, both on legal and policy grounds, the

government can support an investigatory proceeding that the Court has initiated and whether grand jury subpoenas are a better alternative manner in which to proceed. In addition, senior DOJ officials have decided that, in light of the sensitivities of this case, the Attorney General should approve the government's continued participation in the Courtinitiated proceeding. The Attorney General will now also consider whether the government can issue grand jury subpoenas to Mr. Gertz. In light of these developments, we sought and obtained a stipulation from Mr. Gertz's counsel extending the date of the government's response to his motion to July 10, 2008. At the time, we advised counsel for Mr. Gertz in very general terms that there were some issues that the government had to address, but we provided the counsel with none of the details described above.

7. The government's believes that it will need 30 more days to resolve these issues within DOJ, which would result in the government filing any response by August 11, 2008. If more time is needed, the government will advise the Court at least one week before the new due date for the government's brief. Because August 11 is after the currently scheduled hearing date of July 24, 2008, the government is also

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seeking to continue the hearing date until September 23, 2008.

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

Jay I. Bratt