

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS)
CAROLYN JEWEL and ERIK KNUTZEN)
on Behalf of Themselves and All Others)
Similarly Situated,)

Plaintiffs,)

v.)

AT&T CORP., AT&T INC. and)
DOES 1-20, inclusive,)

Defendants.)

Case No. C-06-0672-VRW

**DECLARATION OF
LIEUTENANT GENERAL
KEITH B. ALEXANDER, DIRECTOR,
NATIONAL SECURITY AGENCY**

I, Keith B. Alexander, declare as follows:

INTRODUCTION

1. I am the Director of the National Security Agency (NSA), an intelligence agency within the Department of Defense. I am responsible for directing the NSA, overseeing the operations undertaken to carry out its mission and, by specific charge of the President and the Director of National Intelligence, protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 12958, 60 Fed. Reg. 19825 (1995), as amended on March 25, 2003, and Department of Defense Directive No. 5200.1-R, Information Security Program Regulations, 32 C.F.R. § 159a.12 (2000).

2. The purpose of this declaration is to support the assertion of a formal claim of the military and state secrets privilege (hereafter "state secrets privilege"), as well as a statutory privilege, by the Director of National Intelligence (DNI) as the head of the intelligence community. In this declaration, I also assert a statutory privilege with respect to information about NSA activities. For the reasons described below, and in my classified declaration

DECLARATION OF LT. GEN. KEITH B. ALEXANDER,
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1 provided separately to the court for *in camera* and *ex parte* review, the disclosure of the
2 information covered by these privilege assertions would cause exceptionally grave damage to the
3 national security of the United States. The statements made herein, and in my classified
4 declaration, are based on my personal knowledge of NSA operations and on information made
5 available to me as Director of the NSA.

6 **THE NATIONAL SECURITY AGENCY**

7 3. The NSA was established by Presidential Directive in 1952 as a separately
8 organized agency within the Department of Defense. Under Executive Order 12333, § 1.12.(b),
9 as amended, NSA's cryptologic mission includes three functions: (1) to collect, process, and
10 disseminate signals intelligence ("SIGINT") information, of which communications intelligence
11 ("COMINT") is a significant subset, for (a) national foreign intelligence purpose, (b)
12 counterintelligence purposes, and (c) the support of military operations; (2) to conduct
13 information security activities; and (3) to conduct operations security training for the U.S.
14 Government.

15 4. There are two primary reasons for gathering and analyzing intelligence
16 information. The first, and most important, is to gain information required to direct U.S.
17 resources as necessary to counter external threats. The second reason is to obtain information
18 necessary to the formulation of the United States' foreign policy. Foreign intelligence
19 information provided by NSA is thus relevant to a wide range of important issues, including
20 military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign
21 aspects of international narcotics trafficking.

22 5. In the course of my official duties, I have been advised of this litigation and
23 reviewed the allegations in Plaintiffs' Amended Complaint and Motion for a Preliminary
24 Injunction. As described herein and in my separate classified declaration, information
25 implicated by Plaintiffs' claims is subject to the state secrets privilege assertion in this case by
26 the DNI. The disclosure of this information reasonably could be expected to cause exceptionally

1 grave damage to the national security of the United States. In addition, it is my judgment that
2 any attempt to proceed in the case will substantially risk disclosure of the privileged information
3 and will cause exceptionally grave damage to the national security of the United States.

4 6. Through this declaration, I also hereby invoke and assert NSA's statutory
5 privilege to protect information related to NSA activities described below and in more detail in
6 my classified declaration. NSA's statutory privilege is set forth in section 6 of the National
7 Security Agency Act of 1959 (NSA Act), Public Law No. 86-36 (codified as a note to 50 U.S.C.
8 § 402). Section 6 of the NSA Act provides that "[n]othing in this Act or any other law . . . shall
9 be construed to require the disclosure of the organization or any function of the National
10 Security Agency [or] any information with respect to the activities thereof. . . ." By this
11 language, Congress expressed its determination that disclosure of any information relating to
12 NSA activities is potentially harmful. Section 6 states unequivocally that, notwithstanding
13 *any* other law, NSA cannot be compelled to disclose *any* information with respect to its
14 authorities. Further, NSA is not required to demonstrate specific harm to national security when
15 invoking this statutory privilege, but only to show that the information relates to its activities.
16 Thus, to invoke this privilege, NSA must demonstrate only that the information to be protected
17 falls within the scope of section 6. NSA's functions and activities are therefore protected from
18 disclosure regardless of whether or not the information is classified.

19 **INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE**

20 7. Following the attacks of September 11, 2001, the President of United States
21 authorized the NSA to utilize its SIGINT capabilities to collect certain "one-end foreign"
22 communications where one party is associated with the al Qaeda terrorist organization under the
23 Terrorist Surveillance Program (TSP) for the purpose of detecting and preventing another
24 terrorist attack on the United States. Any further elaboration on the public record concerning the
25 TSP would reveal information that could cause the very harms that the DNI's assertion of the
26 state secrets privilege is intended to prevent. My separate classified declaration provides a more

1 detailed explanation of the information at issue and the harms to national security that would
2 result from its disclosure.

3 8. Plaintiffs also make allegations regarding other purported activities of the NSA,
4 including allegations about the NSA's purported involvement with AT&T. Regardless of
5 whether these allegations are accurate or not, the United States can neither confirm nor deny
6 alleged NSA activities, relationships, or targets. To do otherwise when challenged in litigation
7 would result in the exposure of intelligence information, sources, and methods and would
8 severely undermine surveillance activities in general. For example, if the United States denied
9 allegations about intelligence targets in cases where such allegations were false, but remained
10 silent in cases where the allegations were accurate, it would tend to reveal that the individuals in
11 the latter cases were targets. Any further elaboration on the public record concerning these
12 matters would reveal information that could cause the very harms that the DNI's assertion of the
13 state secrets privilege is intended to prevent. My separate classified declaration provides a more
14 detailed explanation of the information at issue and the harms to national security that would
15 result from its disclosure.

16 CONCLUSION


17 9. In sum, I support the DNI's assertion of the state secrets privilege and statutory
18 privilege to prevent the disclosure of the information detailed in my classified declaration that is
19 available for the Court's *in camera* and *ex parte* review. I also assert a statutory privilege with
20 respect to information about NSA activities. Moreover, because proceedings in this case risk
21 disclosure of privileged and classified intelligence-related information, I respectfully request that
22 the Court not only protect that information from disclosure, but also dismiss this case to stem the
23 harms to the national security of the United States that will occur if it is litigated.

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27 DECLARATION OF LT. GEN. KEITH B. ALEXANDER,
28 DIRECTOR, NATIONAL SECURITY AGENCY
Case No. C 06-0672-JCS

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

DATE: 12 May 06



LT. GEN. KEITH B. ALEXANDER
Director, National Security Agency

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DIRECTOR, NATIONAL SECURITY AGENCY
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