

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

HAJI BISMULLAH ,)	
)	Case No. 06-1197
Petitioners,)	
)	UNCLASSIFIED DECLARATION
)	OF LTG KEITH B.
v.)	ALEXANDER, DIRECTOR,
)	NATIONAL SECURITY
ROBERT M. GATES,)	AGENCY
Secretary of Defense)	
)	
)	
Defendants.)	
_____)	

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

(U) I, Lieutenant General Keith B. Alexander, do hereby state and declare as follows:

(U) Introduction and Summary

1. (U) 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 make this declaration in support of the United States' request for rehearing en banc and to inform the court of the sensitivity of the information potentially at issue in cases involving detainees held at Guantanamo Bay, Cuba. The statements made herein are based on my personal knowledge of NSA activities and operations, and on information available to me as Director of the NSA.

2. (U) Through the exercise of my official duties, I have been advised of this litigation and the court's decision of 20 July 2007. Specifically, I have been advised that

the Court's decision requires this agency to compile and provide to the Court and potentially to counsel for the detainees all information that the Combatant Status Review Tribunal (hereafter Tribunal) was authorized to obtain and consider. In addition, I have been advised that the decision requires production of the information even in the information did not form the basis of the detention of the individual and even if the information was never considered by the Tribunal. It is my understanding that, currently, approximately 130 detainees have filed petitions for rehearing.

(U) Background

A. (U) The National Security Agency

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

B. (U) Global War on Terror

4. (U) On September 11, 2001, the al Qa'ida terrorist network launched a set of coordinated attacks along the East Coast of the United States. Four commercial jetliners, each carefully selected to be fully loaded with fuel for a transcontinental flight, were hijacked by al Qa'ida operatives. Those operatives targeted the Nation's financial center in New York with two of the jetliners, which they deliberately flew into the Twin

Towers of the World Trade Center. Al Qa'ida targeted the headquarters of the Nation's Armed Forces, the Pentagon, with the third jetliner. Al Qa'ida operatives were apparently headed toward Washington, D.C. with the fourth jetliner when passengers struggled with the hijackers and the plane crashed in Shanksville, Pennsylvania. The intended target of this fourth jetliner was most evidently the White House or the Capitol, strongly suggesting that al Qa'ida's intended mission was to strike a decapitation blow to the Government of the United States—to kill the President, the Vice President, or Members of Congress. The attacks of September 11 resulted in approximately 3,000 deaths—the highest single-day death toll from hostile foreign attacks in the Nation's history. In addition, these attacks shut down air travel in the United States, disrupted the Nation's financial markets and government operations, and caused billions of dollars of damage to the economy.

5. (U) On September 14, 2001, the President declared a national emergency “by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States.” Proclamation No. 7463, 66 Fed. Reg. 48199 (Sept. 14, 2001). The United States also launched a massive military response, both at home and abroad. The United States also immediately began plans for a military response directed at al Qa'ida's training grounds and haven in Afghanistan. On September 14, 2001, both Houses of Congress passed a Joint Resolution authorizing the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks” of September 11. Authorization for Use of Military Force, Pub. L. No. 107-40 § 21(a), 115 Stat. 224, 224 (Sept. 18, 2001) (“Cong.

Auth.”). Congress also expressly acknowledged that the attacks rendered it “necessary and appropriate” for the United States to exercise its right “to protect United States citizens both at home and abroad,” and acknowledged in particular that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.” *Id.* pmb1. As a direct result of the military actions described above, and during the active conflict, numerous individuals were captured and detained by the United States.

6. (U) As the President made clear at the time, the attacks of September 11 “created a state of armed conflict.” Military Order, § 1(a), 66 Fed. Reg. 57833, 57833 (Nov. 13, 2001). Indeed, shortly after the attacks, NATO took the unprecedented step of invoking Article 5 of the North Atlantic Treaty, which provides that an “armed attack against one or more of [the parties] shall be considered an attack against them all.” North Atlantic Treaty, Apr. 4, 1949, art. 5, 63 Stat. 2241, 2244, 34 U.N.T.S. 243, 246; see also Statement by NATO Secretary General Lord Robertson (Oct. 2, 2001), available at <http://www.nato.int/docu/speech/2001/s011002a.htm> (“[I]t has now been determined that the attack against the United States on September 11th was directed from abroad and shall therefore be regarded as an action covered by Article 5 of the Washington Treaty . . .”). The President also determined that al Qa’ida terrorists “possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government,” and he concluded that “an extraordinary emergency exists for national defense purposes.” Military Order, § 1(c), (g), 66 Fed. Reg. at 57833-34. As the

Supreme Court has recognized, implicit in the Authorization to Use Military Force was authorization to detain individuals captured during the armed conflict.

C. **(U) Intelligence Challenges After September 11, 2001**

7. (U) As a result of the unprecedented attacks of September 11, 2001, the United States found itself immediately propelled into a worldwide war against a network of terrorist groups, centered on and affiliated with al Qa'ida, that possesses the evolving capability and intention of inflicting further catastrophic attacks on the United States. That war is continuing today, at home as well as abroad.

8. (U) The war against al Qa'ida and its allies is a very different kind of war, against a very different enemy, than any other war or enemy the Nation has previously faced. Al Qa'ida and its supporters operate not as a traditional nation-state but as a diffuse, decentralized global network of individuals, cells, and loosely associated, often disparate groups, that act sometimes in concert, sometimes independently, and sometimes in the United States, but always in secret—and their mission is to destroy lives and to disrupt a way of life through terrorist acts. Al Qa'ida works in the shadows; secrecy is essential to al Qa'ida's success in plotting and executing its terrorist attacks.

(U) NSA Statutory Privilege

9. (U) Information regarding NSA's intelligence efforts directly relates to the Agency's most core functions and activities. Congress has recognized the harms that may result from disclosure of this information and the need to protect the fragile nature of NSA's cryptologic efforts, including, but not limited to, the existence and depth of signal-intelligence related analytical successes, weaknesses and exploitation techniques. As a

result, Congress has passed several statutes specifically protecting this type of information from disclosure. For example, the NSA activities described in this declaration are subject to protection pursuant to Section 6 of the National Security Agency Act of 1959, Public Law No. 86-36 (codified as a note to 50 USC. § 402) (“NSA Act”).

10. (U) Section 6 of the NSA Act provides that “[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency [or] any information with respect to the activities thereof . . .”. By this language Congress expressed its determination that disclosure of any information relating to NSA activities is potentially harmful. Section 6 states unequivocally that, notwithstanding any other law, NSA cannot be compelled to disclose any information with respect to its activities. Further, while in this case the harm would be very serious, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. Rather, for this statutory privilege to apply, NSA must demonstrate only that the information to be protected falls within the scope of Section 6. NSA’s functions and activities are therefore protected from disclosure regardless of whether or not the information is classified. As Congress appreciated, that which is potentially innocuous to some is potentially exceptionally useful to our adversaries who are targets of NSA collection. This is the risk in the instant litigation where the contemplated review by the Court or Counsel places at risk of inadvertent disclosure the very heart of NSA's operations, its successful collection against these detainees.

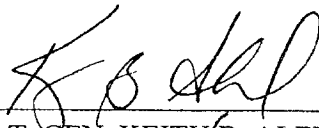
(U) Summary and Conclusion

11. (U) The breadth of information and dissemination to counsel for all of the detainees that is contemplated by the Court's decision in this case, would create a very real danger of disclosure (intentional or inadvertent) of sensitive intelligence information to include sources and methods of collection. Although this information would be produced pursuant to a Court Order, the widespread dissemination of this information even to cleared counsel introduces a real risk of inadvertent (or other) disclosure.

12. (U) The United States has an overwhelming interest in detecting and thwarting further mass casualty attacks by al Qa'ida. The United States has already suffered one attack that killed thousands, disrupted the Nation's financial center for days, and successfully struck at the command and control center for the nation's military. Al Qa'ida continues to possess the ability and intent to carry out a massive attack in the United States that could result in a significant loss of life, as well as have a devastating impact on the U.S. economy. The exposure of sensitive intelligence information, including particularly the sources and methods of collection of this information, could cause exceptionally grave damage to the national security of the United States.

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

DATE: 7 Sept. 2007



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