

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJI BISMULLAH, *et al.*,) Case No. 06-1197
)
Plaintiffs,)
v.)
)
ROBERT GATES, *et al.*,)
) **UNCLASSIFIED**
Defendants.)
)

DECLARATION OF J. MICHAEL McCONNELL, DIRECTOR OF NATIONAL
INTELLIGENCE

I, J. Michael McConnell, declare as follows:

1. I am the Director of National Intelligence (DNI) of the United States. I have held this position since February 2007. Previously, I have served as Executive Assistant to the Director of Naval Intelligence, as Chief of Naval Forces Division at the National Security Agency, as Director of Intelligence for the Joint Chiefs of Staff during Operation Desert Storm, and as Director of the National Security Agency.

Background on the Director of National Intelligence

2. Congress created the position of the Director of National Intelligence (DNI) 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 head of the United States Intelligence Community and as the principal advisor to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to national security. 50 U.S.C. § 403(b)(1), (2).

3. 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 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 the head of the department or agency concerned, as an element of the Intelligence Community. 50 U.S.C. § 401a(4).

4. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is charged with establishing the objectives of; determining the requirements and priorities for; and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. 50 U.S.C. § 403-1(f)(1)(A)(i) and (ii).

5. In addition, the National Security Act of 1947, as amended, states that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI establishes

and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive Orders, or other Presidential directives and for access to and dissemination of intelligence. 50 U.S.C. § 403-1(i)(2)(A), (B).

6. 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. Pursuant to Executive Order No. 12958, 3 C.F.R. § 333 (April 17, 1995), as amended by Executive Order No. 13292 (March 25, 2003), reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me to exercise original TOP SECRET classification authority.

7. The statements made in this declaration are based on my personal knowledge, as well as on information provided to me in my official capacity as DNI.

The Bismullah Decision

8. I have been advised of the facts surrounding this case and am aware of the Court's July 20, 2007 ruling. I understand that the Court held that the record on review under the Detainee Treatment Act (DTA) is not limited to the information that was actually presented to and considered by the Combatant Status Review Tribunal (CSRT) in making its enemy combatant determination. Instead, the Court held that the record on review is comprised of all information the CSRT was authorized to obtain and consider under DOD regulations, which is defined as "such reasonably available information in the possession of the U.S. Government bearing on the issue whether the detainee meets the criteria to be designated as an enemy combatant." I also understand that the Court's definition of the record on review is binding on all appeals of CSRT determinations brought pursuant to the DTA.

9. I have also reviewed and personally considered the information contained in the

classified in camera, ex parte declarations of General Michael H. Hayden, Director, Central Intelligence Agency, and Lieutenant General Keith B. Alexander, Director, National Security Agency, that are filed in this matter. Those declarations provide detailed discussions of the information that would have to be disclosed as a result of the Court's decision and the harms that would result from such disclosures.

10. This declaration is submitted in support of the Government's petition for rehearing in this case. Its purpose is to describe and explain the harm to national security that reasonably can be expected to result if the information described in the CIA and NSA declarations must be provided to the Court and detainee counsel. I also submit this declaration pursuant to my statutory responsibility to protect intelligence sources and methods and to protect the national security and foreign relations of the United States.

Potential Harm from Disclosure of Classified Information

11. This Court's ruling will result in the Intelligence Community having to provide the Court and detainees counsel with thousands of pages of material, including some of the Government's most sensitive and highly classified records. To do so could significantly damage our ability to protect sources and methods and could cause grave harm to our national security.

12. Although the Court has not required that any classified information be publicly disclosed, but rather that information be provided to cleared counsel and the Court, I nevertheless believe that exceptionally grave damage to national security reasonably can be expected to stem from the Court's decision. It is my understanding that over 100 appeals have been filed under the provisions of the DTA, and with over 300 detainees at Guantanamo Bay disclosure of such classified information to detainee counsel may mean disclosure to hundreds of people who are not employees of the United States government and who are not trained in handling classified

information. With so many people allowed access to such sensitive information, I believe that unauthorized disclosures, even if inadvertent, are inevitable.

13. Much of the information at issue here is closely held even within the Intelligence Community, so to provide this information to potentially hundreds of lawyers for detainees, even if they have clearances, could cause serious damage. Some of this information is so strictly controlled that only a small number of federal government employees have access to it. Such strictly controlled access to classified information is a necessary step in safeguarding this information. The details of the government's access control program are described more fully in the classified declarations filed with the Court. This system for controlling access to the U.S. Government's most highly sensitive information and keeping it compartmentalized has been very carefully conceived. Going outside of this access control program risks public disclosure of our nation's most sensitive secrets.

14. In an effort to counter the Al-Qaeda threat and thwart further attacks on the United States, the intelligence community has used many vital intelligence tools to collect counterterrorism information. While some of these programs are now publicly known, to disclose additional information regarding them or provide greater detail about them in this context would risk public disclosure of classified intelligence information, sources, and methods, thereby enabling adversaries of the United States to avoid detection by the U.S. Intelligence Community and/or take measures to defeat or neutralize U.S. intelligence collection, posing a serious threat of damage to our national security interests. Further elaboration of this concern is provided in the classified declarations being filed with the Court.

15. In addition, the Intelligence Community has many sources of information that must be protected. For example, much of the information at issue was provided by foreign intelligence

services or would reveal the specific assistance provided by foreign partners in the global war on terror. Certain liaison services will likely decrease their cooperation with the U.S. Government if their information is caught up in U.S. court proceedings.

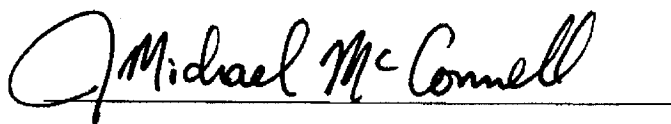
16. Human sources also provide the Intelligence Community with critical information, but only upon the condition of absolute secrecy. Revealing this information would violate the assurances of confidentiality we provide these sources and would likely result in their minimizing or ceasing altogether their cooperation. Such a disclosure would harm the Intelligence Community's ability to retain current sources and recruit new ones, and if we cannot recruit and retain sources, the Intelligence Community simply cannot conduct its business.

Conclusion

17. For all of these reasons and the reasons discussed in the other agency declarations filed with the Court, I believe that the Court's decision in this case could reasonably be expected to cause serious damage, and in some instances, grave damage to our nation's security. In order to protect intelligence sources and methods from unauthorized disclosure and to protect our national security, I submit this declaration in support of the U.S. government's petition for rehearing in this case.

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

DATE: 6 SEP 07



J. Michael McConnell
Director of National Intelligence