

2. (U) The matters stated herein are based upon my personal knowledge, my review and consideration of documents and information available to me in my official capacity, information furnished by Special Agents and other employees of the FBI, and my conclusions have been reached in accordance therewith.
3. (U) I am generally familiar with the Court's July 20, 2007 decision and order in this matter. I submit this declaration in support of the government's Petition for Rehearing and Suggestion for Rehearing *En Banc*.
4. (U) For the Court's convenience, I have divided this declaration into three parts. Part I describes the serious burdens the Court's decision will, if not appropriately modified, place upon the counterterrorism resources and operations of the FBI. Part II describes types of highly sensitive classified FBI information and techniques at issue. Part III discusses the protective order. These sections will demonstrate that FBI compliance with the Court's order could reasonably be expected to cause serious damage to the national security and, therefore, should be reconsidered.

Part I. (U) The Burden on the FBI's Counterterrorism Resources and Operations

5. (U) For several reasons, the requirement that the FBI disclose, even to properly cleared detainee counsel, all of the information in its possession that the Combatant Status Review

Tribunals (CSRT) were authorized to obtain and consider would cause serious damage to the national security.

6. (U) In order to comply with the Order, the FBI would have to search for and disclose potentially hundreds of thousands of documents. The FBI has two ways to search for responsive documents: one way provides access to all documents that have been uploaded into the FBI's Automated Case Support (ACS), the electronic system which has the most complete repository of FBI materials, but is extraordinarily time consuming and would likely have a negative impact on the use of ACS during the search periods; and the second way provides access only to a subset of documents that have been uploaded into ACS but could be done in a reasonable period of time without crippling the system.
7. (U) ACS is an old mainframe computer system and searches of its data must be "literal." For example, in order to search for documents relating to a particular detainee, separate searches must be run for each spelling variant of each name (first, middle, last and alias). Additional searches must be run for every combination of names (e.g., first-last, first-middle-last, alias-last, last-first, etc.). Each of these searches is run against the approximately 27 million documents in the electronic files.

8. (S)

9. (U) Searches like ones conducted to find the Paracha documents encumber ACS because all of the electronic files of the FBI are being searched for the various terms. These searches must take place after normal business hours and on weekends so as not to impair the FBI's electronic record search capacity and

thereby adversely affect the ability of other FBI employees to use ACS in support of the FBI's primary missions.¹

10. (U) In order to meet Court-imposed deadlines, ACS searches would have to be run around the clock from multiple computers. Even with such extraordinary measures, the FBI would still not be able to meet the Court's deadlines. ACS is an operational system used to support everything from white-collar and violent crime to counter-espionage and counterterrorism investigations. Performing multiple simultaneous searches of the nature that would be required to support this order may have a negative impact on the overall performance of ACS.
11. (U) As an alternative to searching ACS, the FBI could conduct these searches through its Investigative Data Warehouse (IDW) system. IDW is a "warehouse" of information that provides a single-access repository for information utilizing extensive data sources, including those located in FBI files and information from sources outside of the FBI. IDW is populated with approximately two-thirds of the information that is

¹ (U) ACS is used for investigative and analytical searches, uploading or downloading documents, and setting investigative leads.

contained in ACS. As is pertinent to these cases, IDW does not contain information from ACS that has restricted access, such as tax records and grand jury materials. Because counterterrorism records are generally not restricted, however, IDW searches are likely to reveal most, if not all of the documents that would be revealed through ACS searches. If IDW were an acceptable route through which to conduct these searches, the FBI could conduct ACS searches only when there is some reason to believe that information pertaining to a particular detainee is in restricted files.

12. (U) Unlike ACS, IDW can be efficiently used to conduct batch (or bulk) data searches. Those searches can be conducted in a more condensed time frame and will have no affect on ACS, because the searches are not run against the ACS mainframe computer system. There would also be no adverse effects on searches and other tasks being performed on ACS or IDW at the same time.
13. (U) Provided that the Court and detainees' counsel do not object to the FBI satisfying its discovery obligation to produce all information that is "reasonably available" through IDW searches, the FBI would likely be able to conduct the initial document

identification searches in a reasonable period of time. This, however, would not alleviate the other issues discussed below.

14. (U) Once potentially responsive documents are identified through either ACS or IDW searches, the FBI must provide the documents to the DoD. The DoD will then conduct its own search and review to determine which documents are actually pertinent to the detainee. The DoD will then return those pertinent documents to the FBI for a "need to know" review.
15. (U) Based upon initial search results, it is probable that tens of thousands of documents may need to undergo this "need to know" review by the FBI. Agents and analysts would be required to review the documents carefully in order to identify any highly sensitive information and techniques described in Part II of this declaration.
16. (U) While it is not possible at this time to estimate the number of agents and analysts who would be required to perform such a review, it is likely to be significant. Due to the specialized subject matter of the documents, it is expected that the review would be performed by agents and analysts assigned to the Counterterrorism Division (CTD) of the FBI.
17. (S)

Part II. (U) Revelation of Highly Sensitive Counterterrorism Information and Techniques

18. (S)

19. (U) Information subject to dissemination pursuant to the Court's order will come from numerous sources, including FBI counterterrorism investigative files of subjects other than the detainees, human sources, foreign government services, other government agencies and other sensitive techniques, including Foreign Intelligence Surveillance Act (FISA)

authorized searches and surveillance. Revealing intelligence acquired from or by these other sources will likely also reveal current subjects of national security investigations.

20. (U) Disseminating human source information could reasonably lead to the disclosure of their identities because often the information provided by human sources is singular in nature. The disclosure of singular information could endanger the life of the source or his/her family or friends, or cause the source to suffer physical or economic harm or ostracism within the community. These consequences, and the inability of the FBI to protect the identities of its human sources, would make it exceptionally more difficult for the FBI and other U.S. intelligence agencies to recruit human sources in the future.

21. (S//OC/NF)

Zz: (U) The FBI receives information from foreign intelligence and law enforcement services in furtherance of its counterterrorism mission. That information is often provided with strict limitations on its use. Generally, the FBI must obtain permission from the foreign service before it can further disseminate or use its information in the course of other proceedings. Further dissemination by the FBI, even to cleared defense counsel or the Court, would require this extensive, time-consuming coordination with every nation that has provided information related to a detainee.

23. (U) Finally, FBI files contain documents provided by other U.S. intelligence agencies. The FBI is not in a position to evaluate the sensitivity of the other government agency information. In fact, standard procedures for handling classified information require that the information must be referred back to the originating agency for review to determine whether it can be disseminated. Those reviews will have to be done by other government agencies whose personnel will also be engaged in their own review of substantive information as required by this order.

24. (S)

25. (S//NF)

Part III. The Protective Order

26. (U) The protective order entered by the Court acknowledges the sensitivity of the classified national security information at issue but does not provide sufficient safeguards to ensure that there is no disclosure, inadvertent or otherwise, of classified national security information. Detainees' counsel, although appropriately cleared, do not handle classified information with regularity. In addition, they do not have much training on the proper handling, storage and maintenance of such information.
27. (U) The protective order does not address several key measures that would reduce the risk of disclosures of classified information. For example, there is no provision for where or how the classified information is to be stored. There is also no provision for where detainees' counsel is to review the classified information. There is no prohibition on detainees' counsel taking the classified information, including any notes

made from the classified information, to unsecured locations, such as back to their offices or to their homes.

28. (U) In addition, there is no provision for a Court Security Officer (CSO) to be appointed in these matters. The CSO would be an added measure of protection for the classified information. The CSO could better ensure proper storage, review and retention of classified information, and the CSO could advise detainee counsel about proper use and handling of the information. With a CSO's involvement, detainee counsel would be less likely to inadvertently disclose classified information.

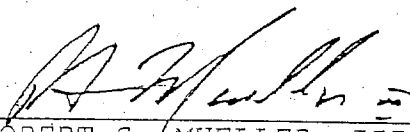
29. (U) Were the Court to modify the protective order in those ways, it would alleviate some of the FBI's concerns about disclosure, although the other impacts to operations and national security, noted in Parts I and II above, remain.

Part IV. Conclusion

30. (S)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury
that the foregoing is true and correct.

Executed on September 6, 2007.



ROBERT S. MUELLER, III
Director
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