

Approved for public release May 5, 2014

~~TOP SECRET//COMINT [REDACTED] ORCON//NOFORN//MR~~

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

**CLASSIFIED SUPPLEMENTAL
DECLARATION OF JOHN
D. NEGROPONTE, DIRECTOR
OF NATIONAL INTELLIGENCE**

**SUBMITTED IN CAMERA,
EX PARTE**

Hon. Vaughn R. Walker

**IN CAMERA, EX PARTE SUPPLEMENTAL DECLARATION OF JOHN D.
NEGROPONTE, DIRECTOR OF NATIONAL INTELLIGENCE**

I, John D. Negroponte, do hereby state and declare as follows:

(U) INTRODUCTION

1. ~~(C)~~ I am the Director of National Intelligence (DNI) of the United States. I submit this declaration to supplement my prior *In Camera, Ex Parte* Declaration of May 12, 2006 ("*In Camera* Negroponte Decl."), and to assert the military and state secrets privilege (hereafter "state secrets privilege") and a statutory privilege over new facts relevant to this case.¹

2. ~~(TS//SI [REDACTED] ORCON)~~ In my prior declaration, I noted that, pursuant to Presidential authorization, the National Security Agency (NSA) collects, in bulk, non-content telephony meta data [REDACTED] in order to track the contacts [REDACTED]

¹ ~~(S)~~ Pursuant to the standards in Executive Order No. 12958, as amended by Executive Order No. 13292, this declaration is classified as: TOP SECRET//COMINT [REDACTED] ORCON//NOFORN//MR. The details concerning these classification markings are set forth in the May 12, 2006 *In Camera, Ex Parte* Declaration of Keith B. Alexander, Director, National Security Agency ("*In Camera* Alexander Decl."), at ¶¶ 5-8.
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1 [REDACTED] of al Qaeda-related operatives and agents. *See In Camera* Negroponte
 2 Decl. ¶ 50; *see also In Camera* Alexander Decl. ¶ 24. I further explained that meta data collection
 3 and analysis is a highly valuable tool for tracking al Qaeda-related networks, is therefore highly
 4 classified and strictly compartmented, and that exceptionally grave damage to the national security
 5 would result if information about this tool were disclosed. *Id.* ¶ 43. Accordingly, I asserted the
 6 state secrets privilege and a statutory privilege under the National Security Act, *see* 50 U.S.C.
 7 § 403-1(i)(1), in order to protect this very important intelligence method that is at risk of disclosure
 8 in this case.

10 3. ~~(TS//SI [REDACTED] //OC/NF)~~ New and important facts have developed since my
 11 prior declaration that must also be protected from disclosure. On May 24, 2006, pursuant to 50
 12 U.S.C. § 1861, the Foreign Intelligence Surveillance Court ("FISC") issued an Order [REDACTED]
 13 [REDACTED] Consistent
 14 with the NSA's past practices described in my earlier declaration, the May 24, 2006 Order
 15 authorizes the NSA to access the archived telephony meta data only when the NSA has identified a
 16 known telephone number for which, based on the factual and practical considerations of everyday
 17 life on which reasonable and prudent persons act, there are facts giving rise to a reasonable,
 18 articulable suspicion that the telephone number is associated with [REDACTED]
 19 [REDACTED] The Order further provides that a telephone number believed to be used by a U.S.
 20 person shall not be regarded as associated with [REDACTED] solely
 21 on the basis of activities that are protected by the First Amendment. In addition to setting forth
 22 other procedures, the FISC has authorized the NSA to retain the meta data for five years, after
 23 which time it shall be destroyed.

27 4. ~~(TS//SI [REDACTED] //OC/NF)~~ The FISC has further ordered that no person [REDACTED]
 28 [REDACTED] shall disclose to any other person that the FBI or NSA has sought or obtained

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1 the telephony meta data, other than to (a) those persons to whom disclosure is necessary to comply
2 with the Order; (b) an attorney to obtain legal advice or assistance with respect to the production of
3 meta data in response to the Order; or (c) other persons as permitted by the Director of the FBI or
4 the Director's designee. A person to whom disclosure is made pursuant to (a), (b), or (c) shall be
5 subject to the nondisclosure requirements applicable to a person to whom the Order is directed in
6 the same manner as such person. The FISC's current Order expires on August 18, 2006, but may be
7 reauthorized for additional 90-day periods upon further applications.

9 5. ~~(TS//SI//OC/NF)~~ For the same reasons articulated in my prior declaration, I hereby
10 assert the state secrets and statutory privileges over these new facts in order to protect from
11 disclosure a highly classified and valuable tool for tracking [REDACTED] Indeed, as
12 stated above, disclosure of NSA's collection of telephony meta data [REDACTED] is now prohibited
13 by court order.
14

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

16
17
18 DATE: 6/16/2006

19 *John Negroponte*
20 JOHN D. NEGROPONTE
21 Director of National Intelligence
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