

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

v.

JEFFREY SEARLS, in his official capacity
as Acting Assistant Field Office Director and
Administrator, Buffalo Federal Detention
Center,

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT’S MOTION FOR LEAVE
TO SUBMIT A CLASSIFIED DECLARATION *EX PARTE, IN CAMERA***

Respondent respectfully requests leave to submit to the Court, for its *ex parte, in camera* review in connection with Respondent’s opposition to Petitioner’s motion to compel (ECF No. 91), the declaration of Brian Gilhooly, Deputy Assistant Director of the Counterterrorism Division of the Federal Bureau of Investigation. Respondent has contemporaneously lodged these documents with the Department of Justice (hereinafter “DoJ”) Classified Information Security Officer (hereinafter “CISO”), pending the Court’s ruling on this motion for leave to file. Respondent has also already filed a truncated version of this declaration (ECF No. 96-1).

The Court’s consideration of this declaration is necessary to the Court’s full understanding of Respondent’s opposition to Petitioner’s motion to compel and of Respondent’s invocation of the investigatory files privilege. As explained in that brief, Respondent does not need to provide a formal invocation of the investigatory files privilege in the manner requested by Petitioner. However, in an abundance of caution, Respondent is now formally asserting relevant privileges, including the investigatory files and deliberative process privileges, should

the Court choose to adjudicate the applicability of Respondent's privilege claims in the context of Petitioner's motion. Respondent respectfully submits that the Court should grant Respondent the opportunity to make more information available to the Court for *ex parte, in camera* review.

The declaration Respondent seeks leave to lodge *ex parte, in camera* contains sensitive, non-public explanations of the harms and risks that can be expected to result if information Respondent has withheld from production were disclosed outside the U.S. government. Indeed, or reasons explained in the *ex parte, in camera* declaration submitted to the Court, these privilege assertions involve "matters which, in the interest of national security, should not be divulged" to Petitioner. *See United States v. Reynolds*, 345 U.S. 1, 10 (1953). Respondent has endeavored to file information on the public docket where possible, which is why Respondent has also filed on the public docket, as an exhibit to his brief in opposition to Petitioner's motion to compel, another declaration from the FBI, which does not require *ex parte, in camera* handling. Nevertheless, some information must be disclosed only *ex parte, in camera*.

Respondent has already tendered the declaration to the DoJ CISO. Should the Court grant Respondent leave to file the declaration *ex parte, in camera*, Respondent's counsel will coordinate with the DoJ CISO to promptly, and securely, transmit this declaration to the Court for its review.

For the foregoing reasons, Respondent respectfully requests the Court to grant him leave to file the declaration of FBI Deputy Assistant Director Gilhooly *ex parte, in camera*.

Date: March 9, 2020

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