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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JOHN DOE CORP., et al.,)	
)	
Plaintiffs,)	No. 04 Civ. 2614 (VM)
)	
v.)	
)	DECLARATION OF
)	ARTHUR M. CUMMINGS II,
ERIC H. HOLDER, et al.)	EXECUTIVE ASSISTANT DIRECTOR
)	
Defendants.)	REDACTED
)	
-----)	

**DECLARATION OF ARTHUR M. CUMMINGS,
EXECUTIVE ASSISTANT DIRECTOR,
FEDERAL BUREAU OF INVESTIGATION**

I, Arthur M. Cummings II, hereby declare the following:

1. (U) I am the Executive Assistant Director of the National Security Branch of the Federal Bureau of Investigation, United States Department of Justice, a component of an Executive Department of the United States. I am responsible for, among other things, overseeing the FBI's Counterterrorism Division, Counterintelligence Division, Directorate of Intelligence, the Terrorist Screening Center, and the Weapons of Mass

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Destruction Directorate. As the Executive Assistant Director, I have official supervision and control over the National Security files and records of the FBI, Washington, D.C.

2. (U) The matters stated herein are based on my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information furnished by Special Agents and other employees of the FBI. My conclusions have been reached in accordance therewith.
3. (U) As the Executive Assistant Director of the National Security Branch, I have been delegated original classification authority by the Director of the FBI. See Executive Order 12958, as amended by Executive Order 13292, as amended by Executive Order 13526, Section 1.3(c).¹ As a result, and pursuant to all applicable Executive Orders, I am responsible for the protection of classified national security information within the National Security Branch of the FBI, including the sources and methods used by the FBI in the collection of national security information. Thus, I have been authorized by the Director of the FBI to execute declarations and affidavits in order to protect such information.

¹ (U) Executive Order 13526, which was issued on December 29, 2009, is the new executive order governing classified national security information. Most of its provisions, however, do not take effect until 180 days after its issuance. Even after such time, the provisions cited herein will remain substantially similar.

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4. (U) This declaration is submitted in support of the government's Memorandum in Opposition to Plaintiffs' Motion for Partial Reconsideration of This Court's October 20, 2009 Order.
5. (U) As the official charged with general supervisory responsibilities for the FBI's national security investigations, I have concluded that the unauthorized disclosure of certain sensitive but unclassified information contained in the national security letter (NSL) in question would reveal, among other things, sensitive FBI national security methods and techniques.
6. (U) Specifically, this declaration addresses the potential harms posed by disclosure of certain language contained in the attachment to the NSL. It is my understanding that the government has agreed to release certain language in the attachment to conform to language released in other litigation. Accordingly, this declaration is being submitted to address the potential harm posed by releasing the language in the bullets of the NSL attachment that would remain redacted in conformity to the earlier release.
7. (U) I am familiar with the issues presented in this civil action. Specifically, I understand that plaintiffs have asked for a reconsideration of the judge's order denying the plaintiffs' motion to lift the nondisclosure requirement as to the attachment to the NSL.



Value of NSLs

8. (U) As the court is aware, NSLs are, in effect, administrative subpoenas that allow the FBI to obtain certain limited types of information from such sources as communications service providers and financial institutions without court authorization. NSLs can be

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used early in a national security investigation to develop leads and to determine a subject's associates and financial dealings. Just as critical, NSLs can be used to remove individuals from suspicion.

9. (U) The FBI's legal authority to issue NSLs derives from multiple sources, including the Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5); the Fair Credit Reporting Act, 15 U.S.C. § 1681u and v; the Electronic Communications Privacy Act, 18 U.S.C. § 2709; and the National Security Act, 50 U.S.C. § 436.
10. (U) The FBI uses NSLs to obtain toll billing records, electronic communication transaction records, financial records, and credit information. All NSLs require a certification that the records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities and that an investigation of a U.S. person is not being conducted solely on the basis of First Amendment activities.
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13. (U) The internet also remains a powerful conduit for radicalization efforts. Terrorist organizations effectively use the internet to spread its messages through statements for consumption by anyone with access to an internet connection. The ability to exert global influence through cyberspace further contributes to the amorphous nature of the threat facing the Homeland by affording individuals access and anonymity within a self-reinforcing extremist movement. Individuals can also find like-minded extremists using chat rooms and social networking sites, enhancing their ability to develop global networks of extremist contacts.
14. (U) Additionally, the FBI considers the cyber threat against our nation to be one of the greatest concerns of the 21st century. The most sophisticated of our adversaries, which includes a number of nation-state and likely some organized crime groups, have the ability to alter our hardware and software along the global supply chain, to conduct remote intrusions into our networks, to establish the physical and technical presence necessary to reroute and monitor our wireless communications and position employees within our private sector and government organizations as insider threats awaiting further instruction.
15. (U) The FBI has not yet seen a high level of end to end cyber sophistication within the terrorist organizations. Still, the FBI is aware of and investigating individuals who are affiliated with or sympathetic to terrorist organizations who have recognized and discussed the vulnerabilities of the United States infrastructure to cyber attack, who have demonstrated an interest in elevating their computer hacking skills and who are seeking more sophisticated capabilities from outside their close knit circles.

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Harm of Disclosure of the NSL Language

16. (U) The attachment provides specific detail as to the types of electronic communication transactional information that may be available to the FBI for the conduct of its national security investigations through a variety of investigative techniques. The disclosure of the sensitive information in the NSL attachment would risk disclosing the information sought and the methods used by the FBI in the course of national security investigations.

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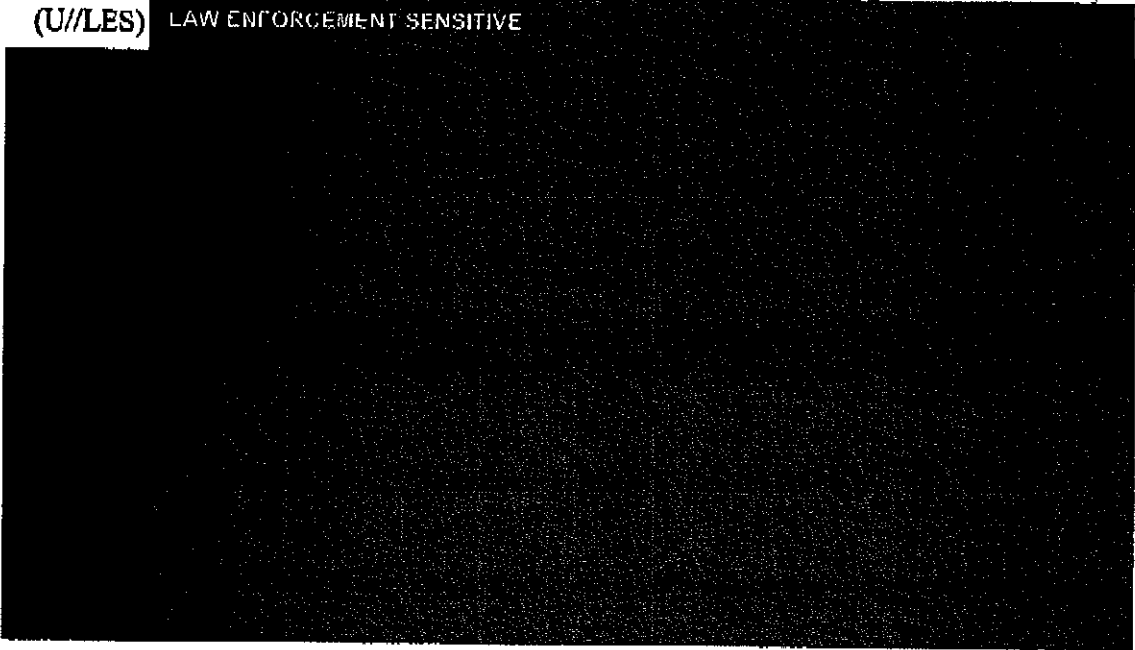


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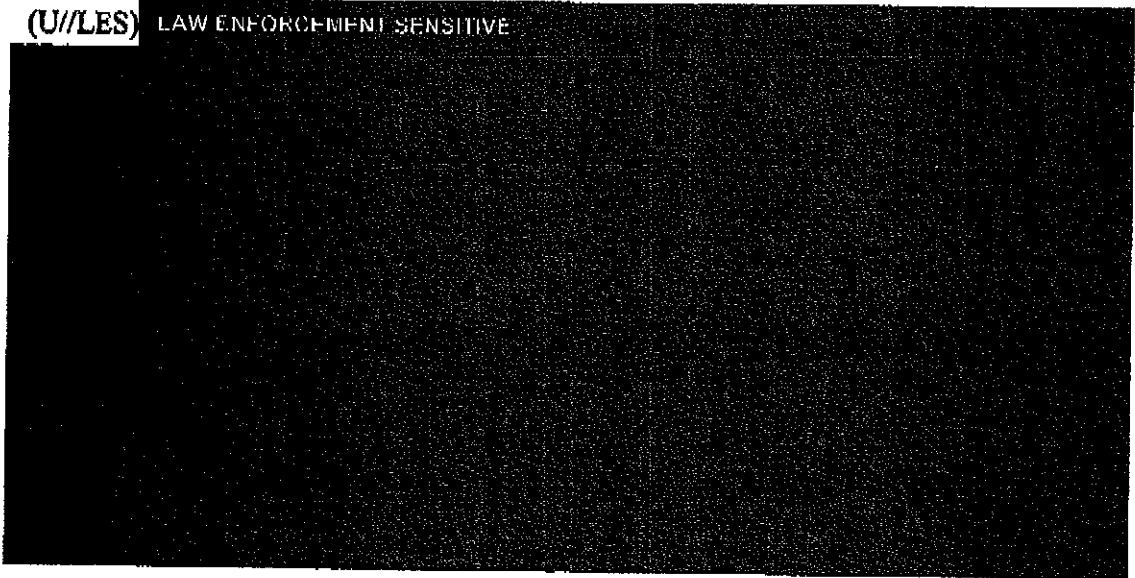
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20. (U//LES) LAW ENFORCEMENT SENSITIVE



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23. (U) Because of these harms, I have concluded, after a considered assessment of all of the facts and circumstances concerning this matter, that the disclosure of the sensitive information in the NSL attachment would risk disclosing the methods used in FBI investigations and would facilitate circumvention of FBI investigative techniques.

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

Executed this 13th day of January 2010.



ARTHUR M. CUMMINGS II
Executive Assistant Director
National Security Branch
Federal Bureau of Investigation
Washington, DC

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