

FILED

JUL 11 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[REDACTED]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN JEWEL, ET AL.,

Plaintiffs,

No. C 08-04373 JSW

v.

NATIONAL SECURITY AGENCY, ET AL.,

Defendants.

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VIRGINIA SHUBERT, ET AL.,

Plaintiffs,

No. C 07-00693 JSW

v.

BARACK OBAMA, ET AL.,

Defendants.

[REDACTED]

ORDER

On June 12, 2014, the Court received an *ex parte, in camera* request from the Government Defendants lodged through the Classified Information Security Officer requesting an advance copy of the transcript of the hearing held on Friday, June 6, 2014. According to the request, the National Security Agency indicated that Government counsel, Anthony J. Coppolino, may have inadvertently made a statement during the hearing that the NSA contends is classified.

United States District Court
For the Northern District of California

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1 The Court determined that the request itself does not disclose any classified material but
2 merely involves the process by which potentially classified information should be maintained,
3 and issued an order under seal which alerted Plaintiffs to the Government's request and required
4 a response in writing.

5 Having received Plaintiffs' response, the Court issued an order requiring that the
6 Government Defendants file a reply, also under seal, to address their burden to request the
7 redaction, a proposed procedure for the Court to make a determination regarding whether and
8 how the specific portions of the transcript should be redacted, and a response to Plaintiffs'
9 motion to unseal all of the filings regarding Defendants' redaction request.

10 Having now received all of the parties' briefing, the Court makes the following rulings:

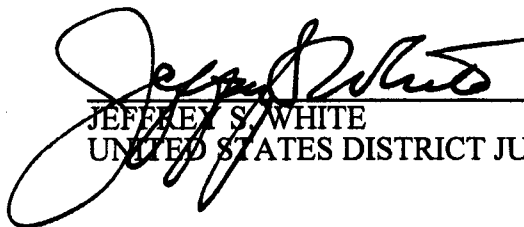
- 11 (1) the transcript from the June 6, 2014 hearing shall be made available to the Court
12 and to the Government Defendants;
- 13 (2) by no later than July 28, 2014, the Government Defendants shall file a response
14 under seal indicating that there was no inadvertent disclosure of classified
15 information during the hearing or shall file an *in camera, ex parte* filing to the
16 Court presenting the information that they contend was classified and
17 inadvertently disclosed, supported by declarations indicating that the information
18 disclosed had been previously classified and is currently classified.

19 Pursuant to the procedure in *Al-Haramain Islamic Foundation v. Bush*, 507 F.3d 1190,
20 1193 (9th Cir. 2007), the Court is obligated to perform an *in camera* review of the transcript to
21 determine whether there has been an inadvertent disclosure of classified information. Further,
22 the Court is obligated to countenance against the reconstruction of the classified information by
23 the public. Accordingly, the Court DENIES without prejudice the Plaintiffs' request to unseal
24 the filings regarding the Government Defendants' transcript request. The Court shall reconsider
25 the decision to unseal this proceeding should the Government Defendants evaluate the transcript
26 and determine that no classified information was inadvertently disclosed or the Court concludes
27 that the transcript does not contain classified information.
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1 However, should the Government Defendants meet their significant burden to
2 demonstrate that information should be redacted from the transcript, the Court shall order that
3 the final transcript available to the public reflect where the redaction occurred in order that the
4 public record accurately reflect the actual hearing and the Court's determination that classified
5 information remained classified despite the inadvertent disclosure.

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7 **IT IS SO ORDERED.**

8 Dated: July 11, 2014

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12 _____
13 JEFFREY S. WHITE
14 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 CAROLYN JEWEL et al,
6 Plaintiff,

Case Number: CV08-04373 JSW

7 v.

8 NATIONAL SECURITY AGENCY et al,
9 Defendant.

10
11 VIRGINIA SHUBERT et al,
12 Plaintiff,

Case Number: CV07-00693 JSW

13 v.

14 GEORGE W BUSH et al,
15 Defendant.

CERTIFICATE OF SERVICE



16 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
17 Court, Northern District of California.

18 That on July 11, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said
19 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
20 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
21 located in the Clerk's office.

22 Anthony Joseph Coppolino
23 James J. Gilligan
24 Marcia Berman
25 U.S. Department of Justice, Civil Divisi
26 20 Massachusetts Avenue, N.W. Room 6102
27 Washington, DC 20530

28 Cindy Ann Cohn
Andrew Gellis Crocker
Kurt Bradford Opsahl
Electronic Frontier Foundation
815 Eddy Street
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United States District Court
For the Northern District of California

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United States District Court
For the Northern District of California

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Da. 1, 2014

Jennifer Ottolini
Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk