

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

JACOB E. ABILT, A PSEUDONYM, )

Plaintiff, )

v. )

Civil Action No. 1:14-cv-1031

GBL/IDD

JOHN O. BRENNAN IN HIS )

OFFICIAL CAPACITY AS DIRECTOR )

OF THE CENTRAL INTELLIGENCE )

AGENCY, et al., )

Defendants. )

**DECLARATION AND FORMAL CLAIM OF  
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES  
BY JOHN O. BRENNAN, DIRECTOR, CENTRAL INTELLIGENCE AGENCY**

I, JOHN O. BRENNAN, hereby declare and state:

**I. BACKGROUND**

1. I am the Director of the Central Intelligence Agency ("CIA" or "Agency"). In my capacity as Director, I lead the CIA and manage human intelligence, covert operations, counterintelligence, liaison relationships with foreign intelligence services, and open source collection programs on behalf of the United States Government. I have held this position since March 8, 2013. Before becoming Director, I served for four years at the White House as Assistant to the

President for Homeland Security and Counterterrorism. I previously had served in the CIA for 25 years, beginning my career at the Agency in 1980 in the Directorate of Operations (now the National Clandestine Service). I joined the Directorate of Intelligence the following year, specializing in the Near East and South Asia. Beginning in the early 1990s, I directed counterterrorism analysis. I later held a variety of senior leadership positions at the CIA, including Deputy Executive Director, Chief of Staff to former Director of Central Intelligence George J. Tenet, Interim Director of the National Counterterrorism Center, Chief of Station in the Middle East, and intelligence briefer to President Bill Clinton. After retiring from the CIA in 2005, I worked in the private sector for three years.

2. As Director, I serve as the head of the CIA, pursuant to the National Security Act of 1947, as amended by § 1011 of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 3036 (formerly codified at 50 U.S.C. § 403-4a). Pursuant to 50 U.S.C. § 3036(d)(1)-(4), I am charged with (1) collecting intelligence through human sources and by other appropriate means; (2) correlating and evaluating intelligence related to the national security and providing appropriate dissemination of such intelligence; (3) providing overall direction for and coordination of the collection of national

intelligence outside the United States through human sources and, in coordination with other elements of the United States Government, ensuring that the most effective use is made of authorized collection resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and (4) performing such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence ("DNI") may direct. A more detailed statement of the authorities of the Director and the CIA is set forth in sections 1.6 and 1.7 of Executive Order 12333, as amended.<sup>1</sup>

3. I understand that the plaintiff alleges that while he was assigned to the CIA's National Clandestine Service,<sup>2</sup> the CIA discriminated against him based on his race (African-American) and alleged disability (narcolepsy), subjected him to a hostile work environment, and retaliated against him for his engagement in protected equal employment opportunity ("EEO") activities. The plaintiff further contends that any legitimate reasons proffered by the CIA for its actions are pretextual.

4. I make this declaration to formally assert and claim the state secrets privilege, as well as relevant statutory

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<sup>1</sup> Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 26 (West Supp. 2011), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008).

<sup>2</sup> The National Clandestine Service is the clandestine arm of the CIA responsible for conducting foreign intelligence and counterintelligence activities.

privileges, in order to protect from disclosure intelligence sources, methods, and activities that may be implicated by the allegations in the plaintiff's Complaint or are otherwise at risk of disclosure in this case. I make the following statements based upon personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

5. After deliberation and personal consideration, I have determined that the complete factual basis for my privilege assertion cannot be set forth on the public record without revealing the very information that I seek to protect and without risking the very harm to U.S. national security that I seek to prevent. I have therefore separately submitted a classified in camera, ex parte declaration for the Court's review, which explains that the unauthorized disclosure of such information reasonably could be expected to result in serious, and in some cases exceptionally grave, damage to our national security.

6. Through the exercise of my official duties, I have been advised of this litigation and I have read the Complaint filed in this case. As set forth in more detail in the classified, in camera, ex parte declaration, the allegations in this case inherently risk the disclosure of classified information concerning the CIA's clandestine intelligence

programs. The plaintiff in this case, "Jacob E. Abilt," was a covert employee of the CIA's National Clandestine Service from May 2008 until he was terminated in October 2011.

7. The facts of Mr. Abilt's employment with the CIA are replete with classified information. For example, the specific National Clandestine Service operations on which he worked are classified. For the majority of his supervisors and coworkers, even the fact of their association with the CIA is classified. The nature and description of the work that they performed is classified. In some instances, particularly when traveling overseas, the location and nature of the facilities in which they worked are classified. Any exploration therefore of Mr. Abilt's employment, and that of his colleagues, will necessarily risk disclosure of highly sensitive classified details concerning the existence and nature of clandestine CIA collection programs and activities.

## **II. FORMAL CLAIM OF PRIVILEGES**

8. State Secrets Privilege: I hereby formally assert and claim the state secrets privilege in order to protect from disclosure the classified information that is implicated by the allegations in the Complaint or are otherwise put at risk of disclosure in this case. I assert this privilege as the head of the CIA and after personal consideration of the matter in order to fulfill my duty to protect from disclosure classified and

sensitive intelligence sources, methods, and activities. My judgment in this matter necessarily rests on my knowledge of the vulnerability of our sources and methods, my experience, and the advice of other CIA professionals.

9. In unclassified terms, my assertion of the state secrets privilege encompasses the following categories of information: (a) information concerning specific CIA programs and activities on which Mr. Abilt worked; and (b) information concerning the CIA's employment of Mr. Abilt, his coworkers, and his supervisors, including, but not limited to, information that might reveal (1) the identities of CIA officers, (2) the job titles, duties, and work assignments of Mr. Abilt and other covert employees, and the criteria and reasons for making work assignments and employment decisions regarding them, (3) sources and methods used by the National Clandestine Service, including operations tradecraft and the identities of human assets, (4) the target and focus of the CIA's intelligence collection and operations, and (5) the location of CIA covert facilities. Disclosure of the above-described information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security of the United States.

10. CIA Statutory Privileges: In addition to my assertion of the state secrets privilege, I also hereby formally assert and claim two CIA statutory privileges to protect the privileged

information described in more detail in my classified in camera, ex parte declaration. See 50 U.S.C. §§ 3024(i), 3507. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." In accordance with guidance from the DNI, and consistent with section 1.6(d) of Executive Order 12333,<sup>3</sup> the CIA is authorized to protect intelligence sources and methods from unauthorized disclosure.

11. Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, provides that the CIA shall be exempted from the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA. One of the principal functions of the CIA, as set forth in section 104A(d) of the National Security Act, 50 U.S.C. § 3036(d)(4), is to perform such other functions and duties related to intelligence affecting the national security as the President or Director of National Intelligence may direct.

12. I do not assert the state secrets and statutory privileges lightly, nor do I assert these privileges to conceal

<sup>3</sup> Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 26 (West Supp. 2012), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "protect intelligence sources, methods, and activities from unauthorized disclosure."

violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency, or to prevent or delay the release of information that does not require protection in the interest of the national security.

Rather, I assert these privileges to protect and preserve vital intelligence sources, methods, and activities. Foreign intelligence collection is critically important for the security of the United States. The compromise of intelligence sources, methods, and activities reasonably could be expected to cause significant harm to U.S. national security and to endanger CIA officers and clandestine human intelligence sources around the world. I assert these privileges as the head of the CIA and after personal consideration of the matter in order to fulfill my duty to protect from disclosure classified and sensitive intelligence sources, methods, and activities. My judgment in this matter necessarily rests on my knowledge of the critical importance and vulnerability of our sources and methods, my experience, and the advice of other CIA officers.

### **III. THE HARM TO U.S. NATIONAL SECURITY FROM THE DISCLOSURE OF PRIVILEGED INFORMATION**

13. I describe below in unclassified terms why the disclosure of the categories of information over which I am asserting the state secrets and CIA statutory privileges reasonably could be expected to cause serious, and in some cases



exceptionally grave, damage to the national security of the United States.

**A. Information Concerning Specific CIA Operational Activities on Which Mr. Abilt Worked**

14. The CIA is charged with foreign intelligence and counterintelligence collection and analysis. Although it is widely acknowledged that the Agency undertakes clandestine activities in support of its mission, the CIA generally cannot confirm or deny the existence of specific intelligence collection activities or disclose the targets of such activities. Intelligence operations and activities usually involve highly sensitive intelligence methods and sources through which an intelligence agency accomplishes its objectives. Exposing operations and activities reasonably could be expected to cause significant harm to national security.

15. Disclosure of CIA intelligence collection operations and activities would hamper the CIA's ability to operate effectively around the world, leading to a reduction in critical foreign intelligence necessary to defend this nation and its interests from attack. If foreign adversaries, such as foreign intelligence services or terrorist organizations, learn about specific programs and activities, they can take effective countermeasures to thwart the success of these operations and activities. Once the nature of an intelligence method or the

fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. Disclosure of CIA intelligence collection operations and activities risks exposing the CIA officers involved in them, curtailing those officers' ability to continue working clandestinely and potentially risking harm to them and their families. It also risks exposing CIA sources, again running the range of consequences from curtailing sources' usefulness, to physical harm against the sources and their families or associates. As such, the disclosure of information regarding the specific intelligence operations and activities on which Mr. Abilt worked reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

**B. Information Concerning the CIA's Employment of Mr. Abilt, His Coworkers, and His Supervisors**

16. Disclosure of information relating to the CIA's employment of Mr. Abilt, his coworkers, and his supervisors similarly could be expected to cause serious, and in some cases exceptionally grave, damage to national security. This includes information that might tend to reveal: (1) the identities of covert CIA officers, (2) the job titles, duties, and work assignments of Mr. Abilt and other National Clandestine Service

employees as well as the criteria and reasons for making work assignments and employment decisions regarding them, (3) sources and methods used by the National Clandestine Service, including operational tradecraft and the identities of human assets, (4) the target and focus of the CIA's intelligence collection and operations, and (5) the location of CIA covert facilities.

17. The CIA safeguards the identities of its officers to protect the fact, nature, and details of the CIA's foreign intelligence activities and the intelligence sources and methods employed to assist those activities. Disclosure of the identities of current covert employees would compromise the ability of such employees to continue to serve in a clandestine role, requiring them to abandon careers they and the U.S. Government have expended considerable resources to develop. In addition, disclosure of the identities of current and former covert employees could jeopardize their lives, as well as the lives of their family members and of acquaintances that they have met during the course of their employment, particularly while serving in overseas assignments. For the reasons described above, disclosure of this information reasonably could be expected to cause serious damage to the national security.

18. Congress, moreover, has recognized this risk and the CIA's unique need to protect from public disclosure the names of its employees. Section 6 of the Central Intelligence Agency Act

of 1949, as amended, 50 U.S.C. § 3507, protects as privileged CIA employees' names and personal identifiers (for example, employees' signatures, employee numbers, etc.) and titles, as well as CIA administrative organizational data. Disclosure of information regarding Mr. Abilt and his coworkers' positions and work assignments also could be expected to cause damage to national security. This includes information regarding: (a) job titles; (b) duties, experience, and training for such positions; (c) their specific work and travel assignments; and (d) criteria and reasons for assignment and employment decisions the Agency made.

19. To compare Mr. Abilt's performance to the performance of his colleagues would require disclosure of their job titles, duties, and the particular tasks to which they were assigned as well as the specific intelligence goals that the officers were attempting to achieve. Disclosure of the different job titles and duties of those positions and the relationship of the positions to each other would also reveal the methods for collecting, analyzing, and disseminating intelligence information. The more our adversaries learn about how CIA specifically conducts its business, the more adept they will become at discovering CIA operations and covert officers and at hindering their effectiveness.

20. Disclosure of information concerning the CIA's employment of Mr. Abilt, his coworkers, and his supervisors would also reveal methods used by the National Clandestine Service (commonly known as "tradecraft") to gather and analyze information, as well as potentially reveal information about the CIA's human assets. Intelligence methods are the means by which an intelligence agency accomplishes its objectives. They must be protected from disclosure to prevent foreign adversaries, such as a foreign intelligence service or a terrorist organization, from developing effective countermeasures against them. Likewise, the protection of intelligence sources, including human sources, is critical to the CIA's operations and ability to gather foreign intelligence. For the reasons described above, disclosure of this information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

21. Disclosure of information regarding the operations of Mr. Abilt and his coworkers would also necessarily risk disclosure of specific CIA intelligence interests as well as the focus of intelligence collection or operational activities. When a foreign intelligence service or adversary nation learns that the CIA is targeting a particular foreign national or group for intelligence collection, it will seek to glean from the CIA's interest what information the CIA has received and,

equally important, what the CIA does not know, why the CIA is focused on that type of information, and how the CIA will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. Disclosure of this information reasonably could be expected to cause serious, and in some cases exceptionally grave, damage to the national security.

22. I am also asserting the privilege over the location of covert installations which are known to Mr. Abilt or which were related to his or his coworkers' work assignments. Disclosure of the fact that the CIA maintains a covert field installation in a particular location potentially could cause the host government to publicly distance itself from the U.S. Government or the CIA, or take other measures to reduce the effectiveness of a CIA office. Additionally, public disclosure of the location of covert CIA offices potentially could lead hostile foreign intelligence services or terrorists to identify personnel working in the facility. Terrorist organizations, in particular, often seek to plan attacks in locations that U.S. Government personnel are perceived to frequent. Public disclosure that the CIA has a covert facility in any given location increases the likelihood of a terrorist attack in that location. For the reasons stated above, disclosure of this information reasonably could be expected to cause serious, and

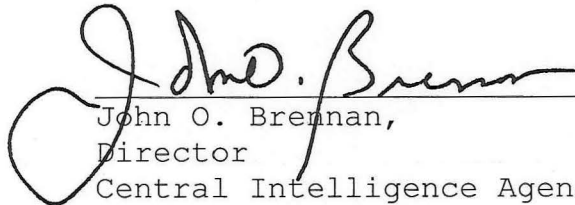
in some cases exceptionally grave, damage to the national security.

**IV. CONCLUSION**

23. It is my belief that this declaration and my classified in camera, ex parte declaration adequately explain why this case risks the disclosure of classified and privileged intelligence information. Should the Court require additional information concerning my claims of privilege, I respectfully request an opportunity to provide such additional information prior to the entry of any ruling regarding my privilege claims.

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

Executed this 2<sup>nd</sup> day of December 2014.

  
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John O. Brennan,  
Director  
Central Intelligence Agency