

1 MELINDA HAAG (CSBA 132612)
United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 ABRAHAM A. SIMMONS (CSBN 146400)
Assistant United States Attorney

4 450 Golden Gate Avenue, 9th Floor
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-7264
7 Facsimile: (415) 436-6748
8 Email: abraham.simmons@usdoj.gov

9 STUART F. DELERY
Acting Assistant Attorney General
10 IAN HEATH GERSHENGORN
Deputy Assistant Attorney General
11 SUSAN K. RUDY
STUART A. LICHT
Assistant Branch Directors
12 MARCIA K. SOWLES (DC Bar No. 369455)
Senior Counsel

13 U.S. Department of Justice
14 Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W., Rm 7114
Washington, D.C. 20530
15 Telephone: (202) 514-4960
16 Facsimile: (202) 616-8470
Email: marcia.sowles@usdoj.gov

17 Attorneys for Defendant

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION
21

22 WALTER R. ROULE,)
23)
24 Plaintiff,)
25 v.)
26 DAVID H. PETRAEUS, DIRECTOR of the)
CENTRAL INTELLIGENCE AGENCY,)
27 Defendant.)
28 _____)

Case No. C 10-4632 CW

**DECLARATION AND FORMAL CLAIM
OF STATE SECRETS PRIVILEGE AND
STATUTORY PRIVILEGES BY DAVID H.
PETRAEUS, DIRECTOR, CENTRAL
INTELLIGENCE AGENCY**

Date: September 20, 2012
Time: 2:00 p.m.
Place: Courtroom 2, 4th Floor
Before: Hon. Claudia Wilken

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WALTER R. ROULE,

Plaintiff,

v.

DAVID H. PETRAEUS, DIRECTOR,
CENTRAL INTELLIGENCE AGENCY,

Defendant.

Case No. C 10-4632 CW

DECLARATION AND FORMAL CLAIM OF
STATE SECRETS PRIVILEGE AND STATUTORY PRIVILEGES
BY DAVID H. PETRAEUS, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

I, DAVID H. PETRAEUS, hereby declare:

I. DECLARANT BACKGROUND

1. I am the Director of the Central Intelligence Agency ("DCIA"). In my capacity as Director, I lead the CIA ("CIA" or "Agency") and manage human intelligence, covert operations, counterintelligence, liaison relationships with foreign intelligence services, and open source collection programs and activities on behalf of the Director of National Intelligence ("DNI") and the United States Government. I have held this position since 6 September 2011.

2. Before becoming DCIA, I served in the United States Army for 37 years. Among other assignments, I served as

1 Commander, NATO International Security Assistance Force and
2 Commander, U.S. Forces-Afghanistan from 4 July 2010 until 18
3 July 2011. My other four-star commands included assignments as
4 the 10th Commander, United States Central Command, and as
5 Commanding General, Multi-National Force-Iraq. Prior to those
6 assignments, I commanded the U.S. Army Combined Arms Center at
7 Fort Leavenworth; the Multi-National Security Transition
8 Command-Iraq and, simultaneously, the NATO Training Mission-
9 Iraq. I have earned four awards of the Defense Distinguished
10 Service Medal, three awards of the Distinguished Service Medal,
11 the Bronze Star Medal for valor, and the State Department
12 Distinguished Service Award.
13

14 3. Through the exercise of my official duties, I have
15 been advised of this litigation and I have read the Complaint
16 filed in this case. I make the following statements based upon
17 my personal knowledge and information made available to me in my
18 official capacity. The judgments expressed in this declaration
19 are my own after personal consideration of the matter.
20

21 4. The purpose of this declaration is to formally assert
22 and claim the state secrets privilege, as well as relevant
23 statutory privileges under section 102A(i)(1) of the National
24 Security Act of 1947, as amended, and section 6 of the CIA Act
25 of 1949, as amended, to protect intelligence sources, methods,
26 and activities that may be implicated by the allegations in the
27
28

1 Complaint or otherwise at risk of disclosure in this case.
2 Specifically, I am invoking the privilege over any information
3 that would tend to expose the identities of covert CIA
4 employees, and intelligence sources, methods, or activities.
5 Such information should be protected by the Court and excluded
6 from any use in this litigation. I make these claims of
7 privilege in my capacity as the Director of the CIA and after
8 deliberation and personal consideration of the matter.
9

10 5. Furthermore, after deliberation and personal
11 consideration, I have determined that a more detailed factual
12 basis for my privilege assertions other than that provided below
13 cannot be set forth on the public record without revealing the
14 very information that I seek to protect and without risking the
15 very harm to U.S. national security that I seek to prevent. I
16 have therefore separately submitted a classified, ex parte, in
17 camera declaration for the Court's review.
18

19 6. As set forth in more detail in the classified, ex
20 parte, in camera declaration, the allegations of this case
21 inherently risk the disclosure of classified information
22 concerning the CIA's clandestine intelligence programs and
23 activities. The plaintiff in this case -- "Walter R. Roule"¹ --
24

25
26 ¹"Walter R. Roule" is a pseudonym given to the plaintiff during
27 the administrative proceedings on his discrimination claim.
28 Although the CIA no longer employs the plaintiff, his
affiliation with the CIA remains classified.

1 was a covert employee of the CIA's National Clandestine Service
2 ("NCS") from January 2004 until he voluntarily resigned in
3 November 2007.

4
5 7. I understand that the plaintiff alleges that the CIA
6 harassed and discriminated against him on the basis of the race
7 and national origin of his wife, who is Asian. Specifically, I
8 understand that Mr. Roule alleges that his work assignments and
9 travel opportunities were limited while his co-workers with
10 Caucasian spouses received better work assignments and travel
11 opportunities. I understand that Mr. Roule asserts that these
12 limitations in turn led to his selection for a less prestigious
13 domestic assignment (which he contends negatively impacted his
14 promotion opportunities), while his co-workers received more
15 challenging and prestigious assignments. Mr. Roule further
16 claims that his supervisor made discriminatory, defamatory, and
17 false statements about him and his activities, and threatened to
18 remove him from his assignment and take away his access to a
19 covert communications system. His supervisor, according to Mr.
20 Roule, then retaliated against him after he filed an EEO claim.

21
22 8. Virtually all of the details regarding Mr. Roule's
23 employment with the CIA are classified. Plaintiff's true name,
24 when associated with the CIA and this case, is classified. The
25 names of his supervisor and his co-workers, when associated with
26 this case (or with the CIA itself), are classified. Information
27
28

1 concerning the specific CIA programs or activities on which
2 Plaintiff worked is classified. His job description and those
3 of his supervisor and co-workers are classified. The nature of
4 the work that they performed and the description of their work
5 assignments are classified. The location and nature of the
6 facilities in which they worked are classified. Any exploration
7 therefore of Mr. Roule's employment, and that of his colleagues,
8 will necessarily risk disclosure of highly sensitive classified
9 details concerning the existence and nature of clandestine CIA
10 collection programs and activities.

12 II. FORMAL CLAIM OF PRIVILEGES

13 9. State Secrets Privilege: I hereby formally assert and
14 claim the state secrets privilege in order to protect from
15 disclosure intelligence sources, methods, and activities that
16 are implicated by the allegations in the Complaint or are
17 otherwise put at risk of disclosure in this case. I make this
18 claim of privilege in my capacity as the Director of the CIA and
19 after deliberation and personal consideration of the matter. My
20 judgment in this matter necessarily rests on my knowledge of the
21 vulnerability of our sources and methods, my experience, and the
22 advice of other CIA professionals.

24 10. In unclassified terms, my privilege assertion
25 encompasses the following categories of information: (a) any
26 information concerning specific CIA programs and activities on
27
28

1 which Mr. Roule worked and (b) any information concerning the
2 CIA's employment of Mr. Roule and his co-workers. Disclosure of
3 the above described information reasonably could be expected to
4 cause serious and, potentially, exceptionally grave damage to
5 the national security.

6
7 11. CIA Statutory Privileges: Additionally, I hereby
8 formally assert and claim two CIA statutory privileges -- which
9 are coextensive with my assertion of the state secrets privilege
10 -- in order to protect the privileged information described
11 above. See 50 U.S.C. 403-1(i)(1) and 403(g). I make this claim
12 of privilege in my capacity as the Director of the CIA and after
13 deliberation and personal consideration of the matter.

14
15 12. Section 102A(i)(1) of the National Security Act of
16 1947, as amended, 50 U.S.C.A. § 403-1(i)(1) (West Supp. 2012)
17 (the "NSA"), provides that the DNI "shall protect intelligence
18 sources and methods from unauthorized disclosure." Pursuant to
19 section 102A of the NSA, as amended, 50 U.S.C.A. § 403-1(i), and
20 consistent with section 1.6(d) of Executive Order 12333,² the CIA
21 is authorized to protect intelligence sources and methods from
22 unauthorized disclosure.

23
24 ² Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R.
25 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 26 (West
26 Supp. 2012), and as amended by Executive Order 13470, 73 Fed.
27 Reg. 45,323 (July 30, 2008), requires the Director of the
28 Central Intelligence Agency to "protect intelligence sources,
methods, and activities from unauthorized disclosure"

1 13. Section 6 of the Central Intelligence Agency Act of
2 1949, 50 U.S.C.A. § 403g (West Supp. 2012), provides that the
3 CIA shall be exempted from the provisions of any other laws
4 which require the publication or disclosure of the organization,
5 functions, names, official titles, salaries, or numbers of
6 personnel employed by the CIA. One of the principal functions
7 of the CIA, as set forth in section 104A(d) of the NSA, 50
8 U.S.C.A. § 403-4a (West Supp. 2012), is to perform such other
9 functions and duties related to intelligence affecting the
10 national security as the President or DNI may direct, including
11 covert action as set forth in Section 503 of the National
12 Security Act of 1947, as amended.
13

14 14. I do not assert these privileges lightly, nor do I
15 assert these privileges to conceal violations of law,
16 inefficiency, or administrative error, or to prevent
17 embarrassment to a person, organization, or agency, or to
18 prevent or delay the release of information that does not
19 require protection in the interest of the national security.
20 The CIA operates within the limitations of its legal authorities
21 and policy guidance from senior U.S. officials. I assert these
22 privileges to protect and preserve vital intelligence sources,
23 methods, and activities. Foreign intelligence collection is
24 critically important for the security of the United States. The
25 compromise of intelligence sources, methods, and activities
26
27
28

1 reasonably could be expected to cause significant harm to U.S.
2 national security and to endanger CIA officers and clandestine
3 human intelligence sources around the world. As the Director of
4 the CIA, it is my solemn duty to protect our nation's secrets
5 and protect the men and women of the CIA. I assert these
6 privileges to meet that duty.
7

8 III. THE HARM TO U.S. NATIONAL SECURITY FROM THE DISCLOSURE OF
9 PRIVILEGED INFORMATION

10 15. I describe below in unclassified terms why the
11 disclosure of the categories of information over which I am
12 asserting the state secrets and CIA statutory privileges
13 reasonably could be expected to cause serious damage to the
14 national security.

15 A. Information Regarding Intelligence Programs and
16 Activities

17 16. The CIA is charged with foreign intelligence and
18 counterintelligence collection and with all-source analysis.
19 Although it is widely acknowledged that the Agency undertakes
20 clandestine activities in support of its mission, the CIA
21 generally cannot confirm or deny the existence of specific
22 intelligence collection activities or disclose the target of
23 such activities. Intelligence programs and activities usually
24 involve highly sensitive intelligence methods and sources
25 through which an intelligence agency accomplishes its
26
27
28

1 objectives. Exposing programs and activities reasonably could
2 be expected to cause significant harm to the national security.

3
4 17. Disclosure of CIA intelligence collection programs and
5 activities would hamper the CIA's ability to operate effectively
6 around the world, leading to a reduction in critical foreign
7 intelligence necessary to defend this nation and its interests
8 from attack. If foreign adversaries, such as a foreign
9 intelligence service or terrorist organization, learn about
10 specific programs and activities, they can take effective
11 countermeasures to thwart the success of these programs and
12 activities. Once the nature of an intelligence method or the
13 fact of its use in a certain situation is discovered, its
14 usefulness in that situation is neutralized and the CIA's
15 ability to apply that method in other situations is
16 significantly degraded. Disclosure of CIA intelligence
17 collection programs and activities risks exposing the CIA
18 officers involved in them, curtailing the officers' ability to
19 continue working clandestinely and potentially risking harm to
20 him and his family. It also risks exposing CIA sources, again
21 running the range of consequences from curtailing that source's
22 usefulness to physical harm against the source and his family or
23 associates.
24

25
26 18. The disclosure of any information regarding the
27 specific intelligence programs and activities on which Plaintiff
28

1 worked would cause significant harm to the national security.
2 Plaintiff worked with other Agency officers to pursue specific
3 goals and programs. If the activities these officers engaged in
4 and the number, locations, and type of positions these officers
5 held were revealed, every program initiated and managed by these
6 office (both then and now) would be exposed.
7

8 B. Details Concerning Plaintiff and His Co-Workers'
9 Employment

10 19. Disclosure of any information relating to the CIA's
11 employment of Plaintiff and his co-workers similarly could be
12 expected to cause serious damage to the national security.
13 This includes any information that might tend to reveal: (a)
14 the identities of Plaintiff and his co-workers or other CIA
15 officers in his chain of command or with decision making
16 authority over his assignments; (b) the job titles, duties, and
17 work assignments of Plaintiff and his co-workers and the
18 criteria and reasons for the work assignments and employment
19 decisions made by the Agency; (c) intelligence sources and
20 methods the CIA uses; (d) the targets and focus of CIA
21 intelligence activities; and (e) locations of covert CIA
22 facilities.
23

24 20. The CIA safeguards the identities of its officers to
25 protect the fact, nature, and details of the CIA's foreign
26 intelligence activities and the intelligence sources and methods
27
28

1 employed to assist those activities. Disclosure of the
2 identities of current covert employees would compromise the
3 ability of such employees to continue to serve in a clandestine
4 role, requiring them to abandon careers in which they and the
5 United States Government have expended considerable resources to
6 develop. In addition, disclosure of the identities of current
7 and former covert employees could jeopardize their lives, as
8 well as the lives of their family members and of acquaintances
9 that they have met during the course of their employment,
10 particularly while serving in overseas assignments.

11
12 21. In addition to maintaining the secrecy of covert
13 officers' identities, the CIA generally avoids officially
14 disclosing the names of even overt officers (with the exception
15 of very senior public figures), especially in cases involving
16 considerable press interest. This is to minimize the risk of
17 exposing overt CIA officers to counter-intelligence targeting by
18 foreign intelligence services (among other concerns). Congress,
19 moreover, has recognized this risk and the CIA's unique need to
20 protect from public disclosure the names of even overt
21 employees. Section 6 of the Central Intelligence Agency Act of
22 1949 ("the CIA Act"), as amended, 50 U.S.C. § 403g, provides
23 that in the interest of the security of foreign intelligence
24 activities and to further implement section 403-1(i) of Title 50
25 (making the Director of National Intelligence responsible for
26
27
28

1 the protection of intelligence sources and methods from
2 unauthorized disclosure), the CIA shall be exempted from the
3 provisions of any law which requires the publication or
4 disclosure of the organization, functions, names, official
5 titles, salaries, or numbers of personnel. As a result, CIA
6 employees' names and personal identifiers (for example, employee
7 signatures, employee numbers, etc.) and titles, as well as CIA
8 administrative organizational data, are privileged even if
9 unclassified.
10

11 22. Disclosure of information regarding Plaintiff's and
12 his co-workers' positions and work assignments also could be
13 expected to cause serious damage to the national security. This
14 includes information regarding: (a) job titles; (b) duties,
15 experience, and training for such positions; (c) their specific
16 work and travel assignments; and (d) criteria and reasons for
17 assignment and employment decisions the Agency made.
18

19 23. As noted, in this case Plaintiff claims that his work
20 assignments and travel opportunities were limited because his
21 wife was Asian and that otherwise similarly situated co-workers
22 with Caucasian spouses received better assignments. I
23 understand that, in an attempt to support his claim, Plaintiff
24 seeks information comparing his position, work assignments, and
25 evaluations with those of his co-workers as well as information
26 regarding the CIA's criteria and reasons for making assignments.
27
28

1 Specifically, I understand that Plaintiff seeks, among other
2 things, "[a]ll contemporaneous and/or subsequently generated
3 memorandum and documents which are, in any way, related to
4 Plaintiff's employment with Defendant," "[t]he performance
5 reviews, evaluations, and disciplinary records of all officers"
6 with whom he worked, all documents "which are in any way related
7 to all officers and staff employees . . . who were stationed
8 with Plaintiff during the time of Plaintiff's employment till
9 [sic] the Plaintiff's supervisor left the base," "[t]he complete
10 personnel file for Plaintiff's supervisor" including
11 "assignments" and "performance review," and "[a]ny and all
12 documents . . . that relate to detail Defendant's policies
13 regarding officer selection, assignment, placement, or
14 compensation packages for oversea [sic] assignments."

17 24. To address the reasons why Plaintiff received certain
18 assignments and not others, CIA also would need to disclose
19 Plaintiff's job titles and duties as well as the details
20 concerning the particular tasks to which he had been assigned
21 and his performance on those tasks measured against established
22 performance criteria. Likewise, to compare Plaintiff's
23 performance to the performance of his colleagues would also
24 require disclosure of their job titles, duties, and the
25 particular tasks to which they were assigned as well as the
26

1 specific intelligence goals that the officers were attempting to
2 achieve.

3 25. Disclosure of the different job titles and duties of
4 those positions and the relationship of the positions to each
5 other also would reveal the methods for collecting, analyzing,
6 and disseminating intelligence information. Disclosure of these
7 methods could be expected to cause significant harm to the
8 national security because the more America's adversaries learn
9 about how CIA specifically conducts its business, the more adept
10 they will become at discovering CIA operations and covert
11 officers and at hindering their effectiveness.
12

13 26. Disclosure of information regarding the specific work
14 assignments of Plaintiff and his co-workers, the evaluation of
15 their performances, and the criteria for making the work
16 assignments and other employment decisions would be even more
17 revealing. Such information would reveal methods covert
18 employees use (commonly known as "tradecraft") to gather and
19 analyze information as well as the focus and targets of CIA's
20 intelligence activities. Moreover, such information could
21 reveal sources, if any, with which Plaintiff and his co-workers
22 may have had contact.
23

24 27. Disclosure of any information regarding the work
25 assignments of Plaintiff and his co-workers would necessarily
26 risk disclosure of specific CIA intelligence interests as well
27
28

1 as the focus of intelligence collection or operational
2 activities. When a foreign intelligence service or adversary
3 nation learns that the CIA is targeting a particular foreign
4 national or group for intelligence collection, it will seek to
5 glean from the CIA's interest what information the CIA has
6 received and, equally important, what the CIA does not know, why
7 the CIA is focused on that type of information, and how the CIA
8 will seek to use that information for further intelligence
9 collection efforts and clandestine intelligence activities.
10

11 28. In this case, Plaintiff's allegations that he was
12 denied an assignment that he sought on the basis of his spouse's
13 race and national origin put at issue the specific assignments
14 he sought and the relative merits of one assignment over
15 another. Disclosure of such information would reveal the CIA's
16 specific intelligence interest and presence in those countries.
17 Additionally, to explain in detail why Plaintiff was not chosen
18 for an assignment would require the CIA to disclose why other
19 officers were chosen for particular assignments, thereby
20 revealing the CIA's intelligence collection focus.
21

22 29. Of equal importance, explaining why a particular
23 officer was chosen would reveal what factors the Agency
24 evaluated for this particular assignment, including details
25 about specific covert programs and activities, as well as
26 information about an officer's particular skill set such as
27
28

1 language abilities, education, and professional experience. A
2 public discussion of the assignment process would necessarily
3 reveal how the Agency selects and uses specific officers in
4 support of the Agency's national security mission.
5

6 30. In this case, Plaintiff also alleges that one of his
7 assignments had been canceled. Just as with his claim regarding
8 assignments for which he was not chosen, this claim puts at
9 issue the relative merits of one assignment over another and the
10 rationale for making or canceling an assignment. Any
11 exploration of those issues, however, would require disclosure
12 of details regarding the assignments. Explaining why certain
13 employees were chosen for particular assignments with certain
14 focuses or why certain assignments may have been cancelled would
15 reveal the geographic areas or subjects in which the CIA had an
16 intelligence interest. Disclosure of this and similar
17 information reasonably could be expected to cause serious damage
18 to the national security.
19

20 31. I am also asserting the privilege over the location of
21 covert field installations which are known to Plaintiff or which
22 were related to his or his co-workers' work assignments.
23 Disclosure of the fact that the CIA maintains a covert field
24 installation in a particular location potentially could cause
25 the host government to publicly distance itself from the U.S.
26 Government or the CIA, or take other measures to reduce the
27
28

1 effectiveness of a CIA office. This, in turn, reasonably could
2 be expected to cause serious damage to the national security.

3 32. Additionally, public disclosure of the location of
4 covert CIA offices potentially could lead hostile foreign
5 intelligence services or terrorists to identify personnel
6 working in the facility. Terrorist organizations, in
7 particular, often seek to plan attacks in locations that U.S.
8 Government personnel are perceived to frequent. Disclosure that
9 the CIA has a covert facility in any given location increases
10 the likelihood of a terrorist attack in that location.

11 33. Disclosure of the information discussed above
12 reasonably could be expected to cause significant harm to the
13 national security and to jeopardize the safety and security of
14 CIA officers.

15
16 IV. CONCLUSION

17 34. It is my belief that my declarations adequately
18 explains why this case cannot be litigated without risking or
19 requiring the disclosure of classified and privileged
20 intelligence information that must not be disclosed. Should the
21 Court require additional information concerning my claims of
22 privilege, I respectfully request an opportunity to provide such
23 additional information prior to the entry of any ruling
24 regarding my privilege claims.
25
26
27
28

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

3
4 Executed this 19th day of July 2012.

5
6 

7 _____
8 David H. Petraeus
9 Director, Central Intelligence Agency
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28