

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-01580-RCL
)	
JOHN R. BOLTON,)	
)	
Defendant.)	
)	
_____)	

DECLARATION OF PAUL M. NAKASONE

(U) I, Paul M. Nakasone, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. (U) I am the Director of the National Security Agency (NSA) and have served in that position since May 4, 2018. In my role as NSA Director, I am responsible the collection and maintenance of foreign Signals Intelligence (SIGINT). I am also the Commander of United States Cyber Command and Chief of the Central Security Service. I am a General in the U.S. Army and previously commanded U.S. Army Cyber Command. I commanded the Cyber National Mission Force at U.S. Cyber Command, as well as a company, battalion, and brigade; and I have served as the senior intelligence officer at the battalion, division, and corps levels. I have held command and staff positions across all levels of the Army, with assignments in the United States, the Republic of Korea, Iraq,

UNCLASSIFIED

UNCLASSIFIED

and Afghanistan. On two occasions, I served as a staff officer on the Joint Chiefs of Staff.

2. (U) As the Director of the NSA, I am responsible for planning, organizing, directing, and managing all NSA-assigned missions and resources. I am accountable to the Director of National Intelligence (“DNI”), the Under Secretary of Defense for Intelligence, and the Department of Defense Chief Information Officer. Further, by specific charge of the President and the DNI, I am ultimately responsible for protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense Manual No. 5200.1, Vol. 1, Information and Security Program (Feb. 24, 2012).
3. (U) The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. The NSA’s foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence (“SIGINT”) information for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. See Executive Order 12333, § 1.7(c), as amended.
4. (U) SIGINT consists of three subcategories: (1) communications intelligence (“COMINT”); (2) electronic intelligence (“ELINT”); and (3) foreign instrumentation signals intelligence (“FISINT”). COMINT is defined as “all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.” 18 U.S.C. § 798. COMINT includes information derived from the interception of foreign and international

UNCLASSIFIED

UNCLASSIFIED

communications, such as voice, facsimile, and computer-to-computer information conveyed via a number of means (e.g., microwave, satellite links, HF/VHF broadcast). ELINT is technical intelligence information derived from foreign non-communications electromagnetic radiations except atomic detonation or radioactive sources—in essence, radar systems affiliated with military weapons platforms (e.g., anti-ship) and civilian systems (e.g., shipboard and air traffic control radars). FISINT is derived from the intercept of foreign electromagnetic emissions associated with the testing and operational deployment of non-U.S. aerospace, surface, and subsurface systems.

5. (U) The NSA's SIGINT responsibilities include establishing and operating an effective unified organization to conduct SIGINT activities set forth in E.O. 12333, § 1.7(c)(2), as amended. In performing its SIGINT mission, the NSA has developed a sophisticated worldwide SIGINT collection network that acquires, among other things, foreign and international electronic communications and related information. The technological infrastructure that supports the NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated electronic data collection and processing technology.
6. (U) There are two primary reasons for gathering and analyzing foreign intelligence information. The first, and most important, is to gain information required to direct U.S. resources as necessary to counter external threats and in support of military operations. The second reason is to obtain information necessary to the formulation and promotion of U.S. foreign policy. Foreign intelligence information provided by the NSA is thus relevant to a wide range of important issues, including military order of battle; threat

UNCLASSIFIED

UNCLASSIFIED

warnings and readiness; cyber-security; arms proliferation; international terrorism; counter-intelligence; and foreign aspects of international narcotics trafficking.

7. (U) The NSA's ability to produce foreign intelligence information depends on its access to foreign and international electronic communications. Foreign intelligence produced by COMINT activities is an extremely important part of the overall foreign intelligence information available to the United States and is often unobtainable by other means. Public disclosure of either the capability to collect specific communications or the substance of the information derived from such collection itself can easily alert targets to the vulnerability of their communications. Disclosure of even a single communication holds the potential of revealing intelligence collection techniques that are applied against targets around the world. Once alerted, targets can frustrate COMINT collection by using different or new encryption techniques, by disseminating disinformation, or by utilizing a different communications link. Such evasion techniques may inhibit access to the target's communications and therefore deny the United States access to information crucial to the defense of the United States both at home and abroad. COMINT is provided special statutory protection under 18 U.S.C. § 798, which makes it a crime to knowingly disclose to an unauthorized person classified information "concerning the communication intelligence activities of the United States or any foreign government."
8. (U) At the request of the National Security Council legal advisor, I have reviewed a limited portion of the Defendant's draft manuscript, and have identified classified information in that portion of the manuscript. Compromise of this information could result in the permanent loss of a valuable SIGINT source and cause irreparable damage to the U.S. SIGINT system. Significant manpower and monetary investments have been and

UNCLASSIFIED

UNCLASSIFIED

continue to be made to enable and maintain this capability. Further, exposure of this information could also cause considerable difficulties in U.S. and allied relations with specific nations and other entities. In particular, I have determined that the unauthorized disclosure of the classified information in the draft manuscript reasonably could be expected to result in exceptionally grave damage to the national security of the United States.

9. The information supporting my determination is highly classified and extraordinarily sensitive and cannot be described in an unclassified declaration. Specifically, a portion of the manuscript implicates sensitive information at the TOP SECRET/Sensitive and Compartmented Information (SCI) level. That information should only be disclosed to individuals with the appropriate security clearance and an official need to know the information. In relation to civil proceedings, the disclosure of that information would normally occur only to the assigned District Judge, ex parte and in camera with appropriate security precautions as arranged through the Court Security Office at the Department of Justice with appropriate security precautions in place to ensure that we appropriately safeguard this intelligence information.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.



PAUL M. NAKASONE

UNCLASSIFIED