

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JONATHAN J. POLLARD

v.

United States Parole Commission et al.

Defendants.

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15 CV. 09131-KBF

UNCLASSIFIED DECLARATION OF
JENNIFER L. HUDSON, DIRECTOR, INFORMATION MANAGEMENT DIVISION,
OFFICE OF THE CHIEF INFORMATION OFFICER,
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

I, JENNIFER L. HUDSON, do hereby state and declare as follows:

1. I am the Director of the Information Management Division (IMD) for the Office of the Director of National Intelligence (ODNI). I have held this position since May 2013. I joined the ODNI in 2007 as Chief of the Information Review and Release Branch and was directly involved in the creation of ODNI's IMD. After a one-year assignment in ODNI's Office of Legislative Affairs, I returned to IMD and assumed my current position as Director of that office. Prior to my arrival in ODNI, I served in various information management roles in the Joint Personnel Recovery Agency, the Defense Prisoner of War/Missing Persons Office, and in the Public Access Branch at the Defense Intelligence Agency.

The Office of the Director of National Intelligence and the Director of National Intelligence

2. The United States Intelligence Community includes ODNI; the Central Intelligence Agency (CIA); the National Security Agency (NSA); the Defense Intelligence Agency; the National Geospatial-Intelligence Agency (NGA); the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; the Office of Intelligence and Analysis of the Department of Homeland Security; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the Director of National Intelligence (DNI) and heads of the department or agency concerned, as an element of the Intelligence Community. See 50 U.S.C. § 3003(4); see also Executive Order 12333 (as amended), § 3.5.

3. Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1101(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending Sections 102 through 104 of Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the Intelligence Community, and as the principal adviser to the President and the National Security Council for intelligence matters related to the national security. 50 U.S.C. §§ 3023(b)(1), (2).

4. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 3024(a)(1). The DNI is charged with establishing the objectives of; determining the requirements and priorities for; and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. 50 U.S.C. §§ 3024(f)(1)(A)(i) and (ii).

5. In addition, the National Security Act of 1947, as amended, provides that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive orders, or other Presidential directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(2)(A), (B). See also Executive Order 12333 § 1.3(b)(8) (stating that the DNI “[s]hall protect, and ensure that programs are developed to protect, intelligence sources, methods, and activities from unauthorized disclosure”). By this language Congress expressed its determination that disclosure of intelligence sources and methods is potentially harmful and directed the DNI to protect them.

6. The function of the ODNI is to assist the DNI in carrying out his duties and responsibilities under the National Security Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

Original Classification Authority Responsibilities

7. Under a written delegation of authority by the DNI pursuant to Section 1.3(c) of Executive Order 13526, I hold original classification authority (OCA) at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions for ODNI's intelligence information up to and including the TOP SECRET level. Section 1.1 of E.O. 13526 provides that information may be originally classified if: (1) an OCA is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the E.O., and (4) the OCA determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the OCA is able to identify or describe the damage. Section 1.2(a) of E.O. 13526 provides that information should be classified at the TOP SECRET level if its unauthorized disclosure reasonably could be expected to cause exceptionally grave damage to the national security. Information should be classified at the SECRET level if its unauthorized disclosure reasonably could be expected to cause serious damage to the national security. At the time information is classified, it is normally assigned a date for declassification, often 25, 50, or even 75 years from the date of creation. However, prior to any declassification, the information is normally reviewed to ensure that there would be no harm to national security if declassified. In my current position, I am the final decision-making authority for the ODNI IMD. I am also responsible for implementing information management-related Executive Orders, laws, regulations, and ODNI policies. This entails controlling information throughout its life cycle and

includes the areas of records management, classification management and declassification, pre-publication reviews, and responding to requests under the Freedom of Information Act (FOIA).

Discussion of Potential Harm to Intelligence Sources and Methods as a Result of Unauthorized Disclosure of Information Compromised by Mr. Pollard

8. This declaration, submitted in support of the Department of Justice's (DOJ) response to Mr. Pollard's Petition for a Writ of Habeas Corpus, provides support for DOJ's response insofar as DOJ's response implicates the equities of the United States Intelligence Community. Through the exercise of my official duties, I have been advised of Mr. Pollard's petition for a writ of habeas corpus and have become familiar with the claims he advances therein. I make the following statements based upon my personal knowledge and on information made available to me in my official capacity.

9. Executive Order 13526, Section 1.4 (c) specifically protects information that is classified to protect intelligence activities, including intelligence sources and methods, from unauthorized disclosure. In this instance, information that is protected by Section 1.4(c), if disclosed, could reasonably be expected to reveal the identity of a human intelligence source, a relationship with an intelligence or security service of a foreign government, or impair the effectiveness of an intelligence method currently in use, available for use, or under development. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. §3024(i)(1) provides that the DNI shall protect intelligence sources and methods from unauthorized disclosure. The Intelligence Community carries out many important functions on behalf of the U.S. Government, including the collection and analysis of foreign intelligence and counterintelligence. A defining characteristic of agency activities within the Intelligence Community is that they are typically carried out through clandestine means, and therefore, they must remain secret in order to

be effective. Any unauthorized disclosure of intelligence information could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed information about its sources, methods, activities, capabilities, interests, strengths, limitations, weaknesses, resources, etc. Terrorist organizations, foreign intelligence services, and other hostile groups use Intelligence Community information, when they can obtain it, to thwart our intelligence activities or exploit perceived or identified weaknesses or limitations to evade our efforts to collect intelligence and attack the United States and its interests. Intelligence sources and methods include the basic business practices and methodological “tools” used by the Intelligence Community to accomplish its mission. These sources and methods must be protected from disclosure in every situation where a certain intelligence interest, capability, or technique, if disclosed, would allow our adversaries to take countermeasures to nullify effectiveness. Likewise, weakness or limitations in Intelligence Community capabilities must also be protected from disclosure in order to protect against exploitation by our adversaries.

10. In response to the Court’s inquiry as to the classified or unclassified status of information that Mr. Pollard compromised, the Department of Justice requested that Intelligence Community elements identify documents believed to have been compromised by Mr. Pollard and conduct a classification review of a set of those documents. As a result and at the Department of Justice’s request, Intelligence Community elements have confirmed that certain information believed to have been compromised by Mr. Pollard remains currently and properly classified at the Top Secret and Secret levels. As such, any unauthorized disclosure of this information could risk harm to our national security, as it could enable terrorist organizations, foreign intelligence services, and other hostile groups to discern and thwart the use of particular sources and methods

to collect such information, discover and fill in gaps in their own understanding of U.S. intelligence and other activities, or discover and exploit to our detriment gaps in U.S. knowledge or understanding of information collected. The unauthorized disclosure of the specific information believed to have been compromised by Mr. Pollard, and which remains classified, could be expected to result in serious or exceptionally grave damage to the national security by harming intelligence activities, sources and methods, and revealing foreign government information and foreign relations or foreign activities of the United States. This is because disclosure of even a single piece of intelligence holds the potential of revealing intelligence collection methods and techniques that are applied against targets around the world. Once alerted, targets can easily frustrate intelligence collection by using different or new encryption techniques, disseminating disinformation, pursuing new operational security measures, or utilizing a different communications link or method. Such evasion techniques may inhibit access to intelligence, and consequently, deny the United States access to information crucial to the defense of the United States both at home and abroad. Importantly, some of the sources and methods used to develop some of the intelligence exposed by Mr. Pollard not only remain classified but are still in use by the Intelligence Community today.

11. Some of the information Mr. Pollard is believed to have compromised included intelligence from human sources (HUMINT). HUMINT is collected by multiple agencies within the Intelligence Community. Even though the human sources are not identified by name, both descriptive details about the sources and the very nature of the information provided by the source could tend to reveal the source's identity since only a limited number of individuals may have had access to that particular information. Revelation of the source's secret relationship with the U.S.

Government could cause significant harm to the source, his or her family, and his or her associates. Even in cases where the source is no longer alive, such disclosure can place in jeopardy the lives of individuals with whom the source has had contact. More broadly, the release of information that would or could identify an intelligence source would damage the U.S. Government's credibility with current intelligence sources and undermine its ability to recruit future sources.

12. In addition to the information believed to have been exposed by Mr. Pollard and derived from human sources, Mr. Pollard is believed to have compromised information obtained from signals intelligence (SIGINT). NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate SIGINT information, of which communications intelligence is a significant subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. See E.O. 12333, section 1.7(c), as amended. In performing its SIGINT mission, NSA exploits foreign electromagnetic signals to obtain intelligence information necessary to the national defense, national security, or the conduct of foreign affairs. Some of the SIGINT documents believed to have been compromised by Mr. Pollard would reveal intelligence sources and methods still in use today. An unauthorized disclosure of that information would compromise some of NSA's current sensitive SIGINT capabilities. Additionally, some of the SIGINT documents at issue implicate details of intelligence relationships with and the equities of NSA's foreign partners. NSA's foreign partners provide NSA with unique and valuable insights on a wide variety of issues that are critical to U.S. national security, such as counterterrorism, combating proliferation, and regional stability. Revealing the details of those intelligence relationships or compromising details about those foreign partners' equities could put NSA's foreign partnerships at risk. Given the risk of

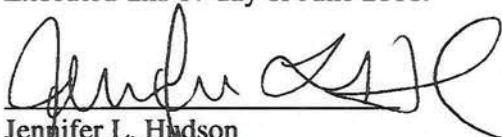
jeopardizing NSA's current sources and methods as well as foreign relationships, as well as other risks that cannot be disclosed in an unclassified submission, these documents and the information they contain remain currently and properly classified at the Top Secret level.

13. The Intelligence Community also believes that Mr. Pollard compromised documents containing or reflecting sensitive insights furnished from geospatial intelligence (GEOINT), and discussing sensitive topics including military forces, threats to regional stability, foreign nuclear-weapons, or weapons of mass destruction capabilities. Specifically, these documents included information discussing the following, among other topics which cannot be disclosed in an unclassified submission: (1) the types of signatures and methods used to identify modifications or upgrades to weapons systems, either in a weapons-producing country's research and development program or in a sale or example of proliferation of advanced weapons systems, (2) unique equipment used to transport components within a foreign nation's development and production facility, as well as characterization of the physical security infrastructure associated with the facility, and (3) methods used to detect and describe the disposition and posture of military forces involved in a regional dispute. Although GEOINT sources and methods continually evolve, NGA has determined that the sources, the collection strategies, and the analytic signatures and methods implicated in the documents believed to have been exposed by Mr. Pollard remain classified at the Secret level, and the unauthorized disclosure could compromise current collection and analytic methods. Moreover, while it is generally known that the Intelligence Community uses GEOINT to provide this type of information to analysts working in the Intelligence Community, policy makers, planners and warfighters, an unauthorized disclosure of the specific information believed to have been compromised by Mr. Pollard could provide detailed insight into

how, and how well, NGA actually provides GEOINT to its customers, which could result in placing U.S. interests at risk, by helping adversaries learn about U.S. techniques, garner insight to allow others to threaten U.S. targets, and gain the ability to deny or deceive U.S. GEOINT sources and methods which could reduce the efficacy of U.S. GEOINT or compromise the integrity of GEOINT. Based on this, the continued protection of the GEOINT sources and methods implicated in the documents believed to have been compromised by Mr. Pollard is in our national security interests.

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

Executed this 17 day of June 2016.

A handwritten signature in black ink, appearing to read "Jennifer L. Hudson", written over a horizontal line.

Jennifer L. Hudson
Director, Information Management Division
Office of the Director of National Intelligence