

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

MAHER ARAR, )  
)  
Plaintiff, )  
)  
v. ) C.A. No. 04-CV-249-DGT-VVP  
)  
JOHN ASHCROFT, *et al.*, )  
)  
Defendants. )  
\_\_\_\_\_ )

NOTICE OF FILING

Notice is hereby given of the filing of the declarations of James B. Comey, the Deputy Attorney General of the United States, acting by operation of law as Attorney General in the above-captioned matter (Exhibit 1), and Tom Ridge, Secretary of the Department of Homeland Security (Exhibit 2). In their capacity as the heads of their respective agencies, each declarant formally asserts the state secrets privilege over information at the core of Counts I, II and III of plaintiff's complaint. The United States' privilege assertion is further supported by classified declarations, including the classified declaration of Secretary Ridge, the classified declaration of Acting Attorney General Comey, and the classified declaration of Bruce J. Gebhardt, former Deputy Director of the Federal Bureau of Investigation.<sup>1</sup> These materials support dismissal of Counts I, II and III of plaintiff's complaint, with respect to all

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<sup>1</sup> At the time the declaration was signed, September 14, 2004, Mr. Gebhardt was Deputy Director of the FBI. He has since retired.

defendants, both in their individual and official capacities.<sup>2</sup>  
In the event that the Court determines that review of these  
classified declarations is necessary to evaluate the assertion of  
the state secrets privilege in this case, the United States will  
make them available for the Court's ex parte, in camera review.

Respectfully submitted,

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Dated: January 18, 2005

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<sup>2</sup> The classified information includes Foreign Intelligence  
Surveillance Act-derived material.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

MAHER ARAR, )  
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Plaintiff, )  
)  
v. ) C.A. No. 04-CV-249-DGT-VVP  
)  
JOHN ASHCROFT, *et al.*, )  
)  
Defendants. )  
\_\_\_\_\_)

DECLARATION OF JAMES B. COMEY

I, James B. Comey, declare as follows:

1. I am the Deputy Attorney General of the United States. The Department of Justice is an Executive Department of the United States. See 28 U.S.C. §§ 501, 503, 504, 509. Attorney General John Ashcroft has been sued in his individual capacity in the above-captioned case, and has recused himself from the decision of whether to assert the state secrets privilege in his official capacity. Under such circumstances and by operation of law, I am authorized to exercise "all duties of that office" with respect to that decision. 28 U.S.C. § 508(a).

2. My statements in this declaration are based on my personal knowledge, on classified and other information provided to me in my official capacity, and on my evaluation of that information. In personally considering this matter, I have executed a classified declaration dated January 18, 2005.

In addition, I have reviewed and considered the public record and classified declarations of Tom Ridge, Secretary of the Department of Homeland Security, dated January 17, 2005, and the classified declaration of Bruce J. Gebhardt, former Deputy Director of the Federal Bureau of Investigation, dated September 14, 2004. My purpose in submitting this Declaration is to assert, in my capacity as Acting Attorney General, a formal claim of the state secrets privilege in order to protect the intelligence, foreign policy and national security interests of the United States.

3. As Acting Attorney General, I have original classification authority pursuant to § 1.3 of Executive Order 12958, as amended by Executive Order 13292, entitled "Classified National Security Information," which sets out the procedures and bases for classification. 60 Fed. Reg. 19825; 68 Fed. Reg. 15315. The classified declarations on which I rely in this case are properly classified under § 1.2 and § 1.4 of Executive Order 13292 because the public disclosure of the information contained in those declarations reasonably could be expected to cause exceptionally grave or serious damage to the intelligence, foreign policy and national security interests of the United States, including defense against transnational terrorism. In addition, portions of the

classified declarations on which I rely are properly classified under § 2.1 of Executive Order 13292 related to derivative classification of material classified by other federal agencies.

4. I have reviewed the complaint of plaintiff, Maher Arar, in the above-captioned matter filed January 22, 2004, in the Eastern District of New York. I have also reviewed the October 7, 2002, Decision of the Regional Director of the Immigration and Naturalization Service, in removal proceedings under Section 235(c) of the Immigration and Nationality Act with respect to Mr. Arar, and the classified addendum referenced in it. In addition, I have reviewed other classified material as indicated in my classified declaration.

5. Litigating Counts I, II and III of plaintiff's complaint would necessitate disclosure of classified information, including: (1) the basis for the decision to exclude plaintiff from this country based on the finding that plaintiff was a member of a foreign terrorist organization, namely al Qaeda, 8 U.S.C. § 1225(c)(2)(B) and 8 U.S.C. § 1182(a)(3)(B)(i)(V); (2) the basis for the rejection of plaintiff's designation of Canada as the country to which plaintiff wished to be removed, 8 U.S.C. § 1231(b)(2)(C)(iv); and (3) the considerations involved in the decision to remove

him to Syria, 8 U.S.C. §§ 1231(b)(2)(C) and (D). Based on my personal consideration of the matter, I have concluded that disclosure of the classified information used by government officials to reach each of the three noted decisions reasonably could be expected to cause exceptionally grave or serious damage to the national security interests of the United States.

6. The classified information in this case relates to the United States' intelligence activities and intelligence information regarding the plaintiff. It contains numerous references to intelligence sources and methods, the disclosure of which reasonably could be expected to cause exceptionally grave or serious damage to the national security of the United States and its foreign relations or activities. Disclosure of this information would enable adversaries of the United States to avoid detection from the Nation's intelligence activities, sources, and methods, and/or take measures to defeat or neutralize those activities, which could seriously damage the United States' national security interests. In addition, disclosure of the information relied upon to reach each of the three noted decisions would pose an exceptionally grave or serious risk to diplomatic relations and national security.

7. Any further elaboration on the public record

concerning this matter would reveal information that could cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declarations that I considered in making this privilege assertion provide a more detailed explanation of the information at issue and the harms to national security that would result from its disclosure.

8. Accordingly, I formally assert the state secrets privilege to prevent the disclosure of the information detailed in the classified declarations available for the Court's ex parte, in camera review.

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

Executed this 18<sup>th</sup> day of January, 2005, in Washington, D.C.

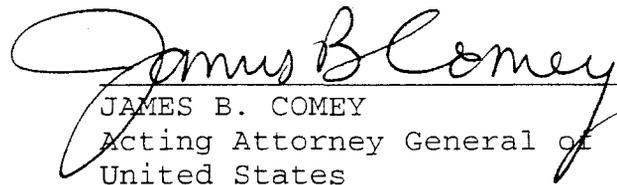
  
\_\_\_\_\_  
JAMES B. COMEY  
Acting Attorney General of the  
United States

EXHIBIT 2



exceptionally grave or serious damage to the foreign policy and national security of the United States, including defense against transnational terrorism. 60 Fed. Reg. 19825; 68 Fed. Reg. 15315. In addition, portions of the classified declarations on which I rely are properly classified under § 2.1 of Executive Order 12958, as amended, related to derivative classification of material classified by other federal agencies.

3. The statements in this declaration are based on my personal review of the following materials. I have reviewed the complaint of plaintiff, Maher Arar (Arar), in the above-captioned matter filed January 22, 2004, in the Eastern District of New York. I have also reviewed the October 7, 2002, decision of the Eastern Regional Director of the INS, in removal proceedings under Section 235(c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(c), with respect to Arar, and the classified addendum referenced in it. I have also reviewed pertinent unclassified material relating to this matter. In addition, I have reviewed other classified material as indicated in my classified declaration.

4. Based on my personal consideration of the matter, I have concluded that the litigation of Counts I through III of Arar's Complaint would necessitate disclosure of the classified information, including:

- a. The basis for the decision to exclude and remove plaintiff from the United States on the finding that plaintiff was a member of a foreign terrorist organization, namely, Al-Qaeda, INA § 235(c)(2)(B), 8 U.S.C. § 1225(c)(2)(B), and INA § 212(a)(3)(B)(i)(V), 8 U.S.C. § 1182(a)(3)(B)(i)(V);

- b. The basis for the rejection of Canada as the country to which plaintiff wished to be removed, INA § 241(b)(2)(C)(iv), U.S.C. § 1231(b)(2)(C)(iv); and
- c. The considerations involved in the decision to remove him to Syria, INA §§ 241(b)(2)(C) and (D), 8 U.S.C. §§ 1231(b)(2)(C) and (D).

5. The INS relied on unclassified and classified materials in making the three decisions referenced above. The classified information in this case relates to the United States' intelligence activities and intelligence information regarding the plaintiff. It contains numerous references to intelligence sources and methods, the disclosure of which reasonably could be expected to cause exceptionally grave or serious damage to the national security of the United States and its foreign relations or activities. Disclosure of this information would enable adversaries of the United States to avoid detection by the nation's intelligence activities, sources, and methods, and/or take measures to defeat or neutralize those activities, thus, causing extremely grave or serious damage to the United States' national security interests. In addition, disclosure of the information relied upon to reach each of the three noted decisions would pose an exceptionally grave or serious risk to diplomatic relations and national security.

6. Any further elaboration on the public record concerning this matter could reveal information that could cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified declaration that I am also submitting in making this privilege assertion provides a more detailed explanation of the information at issue and the harms to national security that could result from its disclosure.

7. Although the INS was not the originator of the classified information in this case, it relied upon and reproduced this information in its derivatively classified materials.

8. My statements and conclusions in this declaration are based upon information made available to me in the course of my official duties and my full understanding of this material. Accordingly, I formally invoke the state secrets privilege to prevent the disclosure of the information detailed in the classified declarations available for the Court's ex parte, in camera review.

9. I submit this declaration in support of my assertion of the state secrets privilege on behalf of the U.S. Department of Homeland Security in this case, Arar v. Ashcroft, et al.

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

Executed this 17<sup>th</sup> day January, 2005.



\_\_\_\_\_  
Tom Ridge,  
Secretary of the U.S. Department of Homeland Security

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2005, true copies of the foregoing Notice of Filing were served by first class mail, postage pre-paid, or by Federal Express, upon the following:

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MARY H. MASON