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JUL 11 2008
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

Attorney for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,) SA CR No. 05-293(B)-CJC
)
Plaintiff,) (UNDER SEAL)
v.)
CHI MAK, et al.,) EX PARTE AND IN CAMERA
) DECLARATION OF JAY I.
Defendants.) BRATT IN SUPPORT OF
HEARING DATE AND TO SET
NEW BRIEFING SCHEDULE

Pursuant to 28 U.S.C. § 1746, Jay I. Bratt declares
as follows:

1. I am the Chief of the Litigation Section of the
Office of Intelligence, National Security Division,
United States Department of Justice ("DOJ"). In
January 2007, I was appointed a Special Attorney to the
Attorney General to investigate the possible leaks of
classified information and grand jury information in
certain publications written by William Gertz, which
included an article by Mr. Gertz that appeared in *The
Washington Times* on May 16, 2006, titled "New Charges
Expected in Defense Data Theft Ring." In this role, I
report to the Attorney General through the United

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1 States Attorney for the District of Columbia and the
2 Assistant Attorney General for the National Security
3 Division. At the time of my appointment, I was an
4 Assistant United States Attorney in the District of
5 Columbia, and I have maintained responsibility for this
6 matter in my current position. I am a member of good
7 standing of the bar of the State of Illinois, and I
8 have been an attorney with DOJ since July 1990.

9 2. I submit this declaration *ex parte* and *in*
10 *camera* because it contains information pertaining to
11 matters that may occur before the grand jury in the
12 government's ongoing investigation of the leaks,
13 because it references internal deliberations within
14 DOJ, and because it references prior communications
15 with the Court that remain under seal. I do not
16 address anything related to the merits of the arguments
17 that Mr. Gertz has advanced in support of his motion to
18 quash the subpoena that the Court issued to him on
19 April 30, 2008.

20 3. Since assuming responsibility for this matter,
21 I have met with the Court on three occasions to provide
22 updates on the progress of the government's
23 investigation. These meetings occurred on February 16,
24 2007, July 24, 2007, and April 21, 2008. At each of the
25 meetings, one topic of discussion was the Court's
26 issuing a subpoena for Mr. Gertz to testify in the
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1 event that the government's investigation did not
2 reveal the source of the leak of the grand jury
3 information in the May 16, 2006, article by Mr. Gertz
4 and the government had not yet received authorization
5 to subpoena Mr. Gertz to the grand jury to reveal his
6 source(s) for the information. During the July 24,
7 2007, meeting, the Court inquired whether, if it issued
8 a subpoena for Mr. Gertz, the government would be able
9 to be a full participant in any resulting proceedings.
10 I agreed to provide the Court with an answer to that
11 question.

12 4. In the fall of 2007, I began the process of
13 getting authorization for a grand jury subpoena for Mr.
14 Gertz. Pursuant to 28 C.F.R § 50.10, any subpoena to a
15 member of the media requires the approval of the
16 Attorney General. In my submission to the component
17 within DOJ responsible for reviewing media subpoenas, I
18 requested authority both to subpoena Mr. Gertz to the
19 grand jury to question him about the source(s) of the
20 leaked information and to participate in any proceeding
21 that the Court initiated to subpoena Mr. Gertz. With
22 respect to the latter request, the component advised me
23 that Attorney General approval was not necessary when
24 the court initiated the proceeding and sought to compel
25 a member of the media to testify. I asked for
26 clarification as to whether my ability to participate
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1 in the court proceeding would include questioning the
2 reporter at any hearing, responding to a motion to
3 quash the subpoena, handling any resulting contempt
4 proceedings, and handling any appeals. I was informed
5 that I could participate to the extent described in the
6 preceding sentence. I advised the persons to whom I
7 report of this decision. I was subsequently authorized
8 to inform the Court that the government could
9 participate fully in any proceeding that resulted from
10 a subpoena that the Court issued to Mr. Gertz. I so
11 informed the Court during our meeting on April 21,
12 2008.

13 5. On April 30, 2008, the Court issued its
14 subpoena to Mr. Gertz. On June 5, 2008, Mr. Gertz,
15 through counsel, filed a motion to quash the Court's
16 subpoena.

17 6. I and another DOJ attorney prepared a response
18 to Mr. Gertz's motion. In advance of the original due
19 date for the government's brief, we circulated the
20 response among our superiors and among persons within
21 DOJ who have an expertise in this area, in part to
22 ensure that the positions we were taking were
23 consistent with those advanced in other cases. We were
24 advised that this matter raises a number of issues that
25 require further consideration within DOJ. These issues
26 include whether, both on legal and policy grounds, the
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1 government can support an investigatory proceeding that
2 the Court has initiated and whether grand jury
3 subpoenas are a better alternative manner in which to
4 proceed. In addition, senior DOJ officials have
5 decided that, in light of the sensitivities of this
6 case, the Attorney General should approve the
7 government's continued participation in the Court-
8 initiated proceeding. The Attorney General will now
9 also consider whether the government can issue grand
10 jury subpoenas to Mr. Gertz. In light of these
11 developments, we sought and obtained a stipulation from
12 Mr. Gertz's counsel extending the date of the
13 government's response to his motion to July 10, 2008.
14 At the time, we advised counsel for Mr. Gertz in very
15 general terms that there were some issues that the
16 government had to address, but we provided the counsel
17 with none of the details described above.

18 7. The government's believes that it will need 30
19 more days to resolve these issues within DOJ, which
20 would result in the government filing any response by
21 August 11, 2008. If more time is needed, the
22 government will advise the Court at least one week
23 before the new due date for the government's brief.
24 Because August 11 is after the currently scheduled
25 hearing date of July 24, 2008, the government is also
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1 seeking to continue the hearing date until September
2 23, 2008.

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

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7 Jay I. Bratt

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