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5 Attorney for Plaintiff  
6 United States of America

7 UNITED STATES DISTRICT COURT  
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
9 SOUTHERN DIVISION

10 UNITED STATES OF AMERICA, ) SA CR No. 05-293(B)-CJC  
11 Plaintiff, )  
12 v. ) DECLARATION OF ACTING  
13 CHI MAK, et al., ) ASSISTANT ATTORNEY  
14 Defendants. ) GENERAL J. PATRICK  
ROWAN

15 Pursuant to 28 U.S.C. § 1746, J. Patrick Rowan  
16 declares as follows:

17 1. I am the Acting Assistant Attorney General for  
18 the National Security Division ("NSD") of the U.S.  
19 Department of Justice ("DOJ"). I have been the Acting  
20 Assistant Attorney General for NSD since March 31,  
21 2008. Before then, I had been the Principal Deputy  
22 Assistant Attorney General in NSD since September 28,  
23 2006, when NSD first came into existence. On June 19,  
24 2008, President Bush nominated me to be the Assistant  
25 Attorney General for NSD. I am a member in good  
26 standing of the Bar of the District of Columbia.

27 2. As of June 30, 2008, NSD consisted of 242  
28 employees, of which 167 are attorneys. In my role as

1 Acting Assistant Attorney General for NSD, I am  
2 responsible, among other things, for overseeing all  
3 investigations of and prosecutions for violations of  
4 the terrorism laws, the espionage statutes, and the  
5 export control laws. These investigations and  
6 prosecutions include all such matters that Assistant  
7 United States Attorneys handle throughout the country.  
8 I have overseen the investigation of the various leaks  
9 of information pertaining to the prosecution of Chi Mak  
10 and his co-defendants in the case now pending before  
11 the Court. My involvement in this matter began with  
12 the initial referrals for an investigation.

13 3. I am personally familiar with the *Ex Parte* and  
14 *In Camera* Declaration of Jay I. Bratt in Support of  
15 Motion to Continue Hearing Date and to Set New Briefing  
16 Schedule ("Bratt Declaration"). I read and reviewed it  
17 before it was filed, and I have reviewed it again in  
18 connection with preparing this declaration. The  
19 conclusions I reach herein concerning the government's  
20 assertion of its deliberative process privilege are  
21 thus based on my personal consideration of the  
22 information in the Bratt Declaration.

23 4. The deliberative process privilege protects the  
24 internal deliberations of the government by exempting  
25 from release recommendations, analyses, concerns, and  
26 other non-factual information prepared in anticipation  
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1 of decision-making. The Bratt declaration contains two  
2 categories of information that are subject to the  
3 deliberative process privilege. First, it reports that  
4 DOJ attorneys have sought the Attorney General's  
5 approval to issue grand jury subpoenas for a witness  
6 and thereby reveals the DOJ attorneys' recommendations  
7 to the Attorney General on the matter. Second, it  
8 references issues that attorneys within DOJ have raised  
9 about the government's playing a continuing role in the  
10 proceeding that the Court has initiated through its  
11 subpoena to William Gertz, and it discusses who will  
12 decide what role, if any, the government will play in  
13 that proceeding.

14 5. The deliberative process privilege is designed  
15 to protect not only the underlying information, but  
16 also the integrity of the deliberative process itself  
17 where the exposure of the process would result in harm.  
18 Here, release of the information in the Bratt  
19 Declaration would have an inhibiting effect upon  
20 decision-making and the development of policy within  
21 DOJ. By way of example, attorneys who raised certain  
22 issues concerning this case could feel restrained from  
23 expressing similar views in the future if their efforts  
24 here resulted in public disclosure of the opinions they  
25 expressed, the recommendations they made, and,  
26 ultimately, whether senior DOJ officials accepted or  
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28

1 rejected those recommendations. It is therefore my  
2 determination that release of the Bratt Declaration,  
3 and exposure of the information it contains, could  
4 result in harm to DOJ, including, but not limited to,  
5 NSD.

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

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10 J. Patrick Rowan  
11 Acting Assistant Attorney General  
12 National Security Division  
13 U.S. Department of Justice  
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