

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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JEREMY BIGWOOD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:11-cv-00602-KBJ
	)	The Honorable Ketanji Brown Jackson
UNITED STATES DEPARTMENT OF	)	
DEFENSE and CENTRAL	)	
INTELLIGENCE AGENCY,	)	
	)	
Defendants.	)	

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**DECLARATION OF THOMAS W. GEARY**

I, THOMAS W. GEARY, Brigadier General, U.S. Air Force, do hereby declare the following to be true and correct:

1. I presently serve as the Director of the Intelligence, Surveillance, and Reconnaissance Directorate (J2) at the United States Southern Command (USSOUTHCOM). I have served in this position since August 2013. My duties include supervision and oversight of all activities within the J2. The J2 mission is to execute all-source, multi-discipline intelligence operations, fully synchronized and integrated with theater, component, national, interagency, and partner nation organizations. Due to the nature of intelligence operations in terms of collecting and analyzing information, a substantial portion of our (J2) records are classified in the interests of national security in accordance with Executive Order 13526.

2. As the J2 Director, I also possess the necessary training and have been designated as an original classification authority (OCA) up to the SECRET level pursuant to E.O. 13526, Sections 1.3. and 3.1. I am qualified to validate the classification of information for national

security purposes and determine when it is appropriate to declassify national security information pursuant to guidance promulgated by this Agency's original classification authorities in accordance with Executive Order 13526. See Executive Order No. 13526, 75 Fed. Reg. 707, 708 (Dec. 29, 2009). I am authorized to assess the current, proper classification criteria of E.O. 13526 and applicable regulations.

3. Under my supervision, J2 personnel search our records systems within their control to identify documents and other information that may be responsive to individual FOIA requests. Subject matter experts within the J2, USSOUTHCOM, then determine whether responsive records, or portions thereof, should be withheld under any applicable statutory FOIA or Privacy Act exemptions. These activities are governed by the Freedom of Information of Act, 5 U.S.C. § 552 as amended by Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, S564, 123 Stat. 2124, 2184; Department of Defense (DoD) Freedom of Information Act Program Regulation, found at 32 C.F.R. Part 286; DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," January 2008, as amended; DoD Directive 5400.07-R, "DOD Freedom of Information Act (FOIA) Program," September 1998; and SOUTHCOM Regulation 27-2.

4. The statements I make in this declaration are made on the basis of my own personal knowledge, my review of files relating to this case, and information I have received in the performance of my official duties.

#### **PLAINTIFF'S FOIA REQUESTS**

5. In this action, Plaintiff seeks access, pursuant to the FOIA, 5 U.S.C. § 552, to certain records maintained by USSOUTHCOM, a component of the DoD, and records originating from the Central Intelligence Agency (CIA). Plaintiff submitted to Defendant, DoD, two FOIA requests seeking (1) records relating to the 2009 military coup d'état against then-Honduran

President Manuel Zelaya, and (2) records relating to General Romeo Velasquez of the Honduran Army.

**USSOUTHCOM'S SEARCH FOR RESPONSIVE RECORDS**

6. Based on the Plaintiff's request, the search terms, and the types of materials the Plaintiff indicated he was seeking, the USSOUTHCOM FOIA office identified the J2 as one of the directorates and units likely to have responsive documents. The J2 conducted thorough manual searches of paper files and electronic searches for documents responsive to the Plaintiff's FOIA requests.

**FOIA EXEMPTIONS CLAIMED UNDER 5 U.S.C. § 552(b)(1)**

7. We fully reviewed 1,019 pages, and confirmed the pages/documents are currently and properly classified, both procedurally and substantively, in accordance with Executive Order 13526, and should remain classified. No records were withheld pursuant to a *Glomar* denial.

8. Title 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters that are:

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order . . .

**Portions of Documents Withheld Under 5 U.S.C. 552(b)(1)**

9. The information withheld under the (b)(1) exemption continues to meet the classification criteria of Executive Order 13526. This information includes information classified at the Secret and Confidential levels. Section 1.2 of Executive Order 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe. “Confidential” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage . . .

10. Section 1.1(a) of Executive Order 13526 provides information may be originally classified under the terms of the Executive Order only if all of the following conditions are met:

- (a) an original classification authority is classifying the information;
- (b) the information is owned by, produced by or for, or is under the control of the United States Government;
- (c) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (d) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

#### **Original Classification Authority**

11. Pursuant to a written delegation of authority in accordance with Executive Order 13526, I hold original classification authority at the SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. I have determined that certain records or portions of records responsive to Plaintiff's request being withheld on the basis of exemption (b)(1) are currently and properly classified SECRET and CONFIDENTIAL.

#### **U.S. Government Information**

12. Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the U.S. Government. The documents from which USSOUTHCOM withheld information pursuant to FOIA exemption (b)(1), as indicated in the *Vaughn* Index attached as Exhibit A, are owned by the U.S. Government

produced by the U.S. Government, and under the control of the U.S. Government.

**Categories of Information Listed in Section 1.4 of Executive Order 13526**

13. Section 1.1 of E.O. 13526 authorizes an OCA to classify information owned, produced, or controlled by the U.S. government if it falls within one of the following eight classification categories specified in Section 1.4 of E.O. 13526:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to national security; or
- (h) the development, production, or use of weapons of mass destruction.

**Section 1.4(a) – Military Plans, Weapons Systems or Operations**

14. Section 1.4(a) of E.O. 13526 authorizes an OCA to classify information pertaining to military plans, weapons systems or operations. The ability to protect from disclosure information concerning military plans and operations, such as the strength and deployment of forces, troop movements, ship sailings, the location and timing of planned attacks, tactics and strategy, and supply logistics, is critical to maintaining national security. Likewise, information

possessed by a government about other government's military activities or capabilities must be protected to preserve the ability to predict those activities or to neutralize those capabilities. Additionally, weapons systems and technology are exempt from disclosure in order to preserve the advantage of surprise in the first use of a new weapon; to prevent an adversary from developing effective countermeasures against a new weapon; and to prevent an adversary from using that technology against its originator (by developing a similar weapon). Disclosure of such information would provide the adversaries of the U.S. the ability to anticipate our actions, counter our operations, and render our weapons useless, thereby, jeopardizing U.S. national security.

15. Based on the information provided to me in the course of my official duties, several documents, as listed in the *Vaughn* Index, contain classified information pertaining to military plans, weapons systems or operations, which was withheld under Section 1.4(a) of E.O.13526. For example, the slide presentation entitled "Mission Analysis: Potential Support to DOS in Honduras," which is bates-stamped as SOUTHCOM 177-220, contains information related to the details of a particular foreign operation that is properly classified and withheld under FOIA exemption (b)(1). Similarly, the Intelligence Executive Highlights produced by J2 frequently contain information concerning particular foreign operations that is properly classified under Section 1.4(a) and withheld under FOIA exemption (b)(1). Information withheld in this case is currently and properly classified pursuant to Section 1.4(a) of Executive Order 13526 and is, therefore, exempt from disclosure under FOIA exemption (b)(1).

**Section 1.4(b) – Foreign Government Information**

16. Section 6.1(s) of Executive Order 13526 defines “foreign government information” as follows:

“Foreign government information” means:

(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence

....

17. The ability to obtain information from foreign governments is essential to the formulation and successful implementation of U.S. foreign policy. Release of foreign government information provided in confidence, either voluntarily by the Department or by order of a court, would cause foreign officials to believe that U.S. officials are not able or willing to observe the confidentiality expected in such interchanges. Governments could reasonably be expected to be less willing in the future to furnish information important to the conduct of U.S. foreign relations, and in general less disposed to cooperate with the United States in the achievement of foreign policy objectives of common interest. Based on the information provided to me in the course of my official duties, several documents, as listed in the *Vaughn* Index, contain classified information concerning foreign government information, which was withheld under Section 1.4(b) of E.O.13526. For example, the document entitled “HND: Zelaya Heightens Political Tensions,” which is bates-stamped as SOUTHCOM 159-176, contains foreign government information concerning the events described in the document. The Intelligence Executive Highlights produced by J2 also frequently contain summaries or analysis

of foreign government information. In view of the important relationship between the United States and Honduras, as well as other countries, protecting foreign government information, and in some cases even the fact that information has been provided, is important to our relationship and to our overall conduct of foreign relations. Information withheld in this case is currently and properly classified pursuant to Section 1.4(b) of Executive Order 13526 and is, therefore, exempt from disclosure under FOIA exemption (b)(1).

#### **Section 1.4(c) -- Intelligence Sources and Methods**

18. Certain information is withheld under Exemption (b)(1) because it relates to intelligence sources and methods. Section 1.4(c) of E.O. 13526 recognizes the disclosure of intelligence sources and methods can cause damage to the sources, the collection methodology and to future intelligence collection, and is thus properly classified under Section 1.4(c) of E.O. 13526. USSOUTHCOM works in concert with a variety of intelligence sources to collect foreign intelligence critical to our national security. Intelligence sources can include individuals (foreign or American), foreign entities, and the intelligence and security services of foreign governments. Intelligence sources can be expected to furnish information only when they are confident that they are protected from retribution by the absolute secrecy surrounding their relationship to the United States government. Sources that are compromised become extremely vulnerable to retaliation from a variety of entities, including their own government or others having a stake in the confidentiality of the information provided by the source. In certain parts of the world, the consequences of public disclosure of the identity of an individual who has served as a U.S. source are often swift and far-reaching, ranging from economic reprisals to possible harassment, imprisonment, or even death.



19. Section 1.4(c) of E.O. 13526 also recognizes that the release of intelligence methods can cause damage to national security. Intelligence methods are the means by which (or the manner in which) an intelligence agency collects information to support military operations, assist in national policymaking, assess military threats, or otherwise accomplish its mission. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, avoid, or damage the intelligence operations of the United States.

20. Disclosure of information that the U.S. government obtains through intelligence sources or methods could reasonably be expected to enable persons and groups hostile to the United States to identify U.S. intelligence activities, methods, or sources, and to design countermeasures to them, which would damage the ability of the U.S. government to acquire information that is often critical to the formulation of U.S. foreign policy and the conduct of foreign relations.

21. Based on the information provided to me in the course of my official duties, several documents, as listed in the *Vaughn* Index, contain classified information concerning intelligence sources and methods, which was withheld under Section 1.4(c) of E.O.13526. For example, the document entitled "Honduras: San Jose Accords: Substance or Symbolic," which is bates-stamped SOUTHCOM 273-275, is an intelligence assessment of the San Jose Accords which contains information that could reveal intelligence sources or methods if publicly released. Similarly, the Intelligence Executive Highlights produced by J2 frequently contain intelligence summaries and assessments that include information on the sources and methods from which the information was obtained. Release of this information would reveal intelligence sources and

methods and impair the intelligence collection mission of the intelligence community. This information remains currently and properly classified under E.O. 13526 and it is appropriately withheld under FOIA exemption (b)(1).

**Section 1.4(d) -- Foreign Relations or Foreign Activities of the United States**

22. Section 1.4(d) of E.O. 13526 also recognizes that the release of certain information would impair U.S. government relations with foreign governments. Diplomatic exchanges are premised upon, and depend upon, an expectation of confidentiality. Mutual trust between governments in this realm is vital to U.S. foreign relations. The inability of the United States to maintain confidentiality in its diplomatic exchanges would inevitably chill relations with other governments, and could reasonably be expected to damage U.S. national security by diminishing our access to vital sources of information. Good relations with other nations facilitate intelligence sharing with the United States. Thus, maintaining good relations with foreign governments is imperative to the successful accomplishment of USSOUTHCOM's mission. Through good foreign relations, USSOUTHCOM acquires intelligence it would not otherwise be able to obtain.

23. Based on the information provided to me in the course of my official duties, release of the information identified in the *Vaughn* Index as being withheld under Section 1.4(d) of E.O. 13526 would damage foreign relations. Information concerning foreign relations or foreign activities was withheld from, among others, documents bates-stamped SOUTHCOM 177-220, SOUTHCOM 254-272, SOUTHCOM 277, and SOUTHCOM 464-472. This information remains currently and properly classified under Section 1.4(d) of E.O. 13526 and it is appropriately withheld under FOIA exemption (b)(1).

**Proper Purpose**

24. Regarding the documents from which USSOUTHCOM withheld information pursuant to FOIA exemption (b) (1), as indicated in the *Vaughn* Index attached as Exhibit A, I have reviewed the documents and there is no reason to believe that any information has been classified in order to conceal violations of law; inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

**Marking**

25. Regarding the documents from which USSOUTHCOM withheld information pursuant to FOIA exemption (b)(1), as indicated in the *Vaughn* Index attached as Exhibit A, I determined that each of these documents bears on its face one of the three classification levels defined in section 1.2 of Executive Order 13526.

**SEGREGABILITY**

26. The U.S. Attorney General's memo dated 19 March 2009 encourages agencies to make discretionary disclosures and directs agencies to segregate and release nonexempt information. The 1,019 pages have been reviewed line-by-line to identify information exempt from disclosure for which a discretionary waiver of exemption could be applied. In examining all the documents withheld or partially withheld as listed and described in the *Vaughn* index, every effort was made to segregate releasable material from exempt material. Nevertheless, several situations arose in which portions of this material had to be redacted in its entirety because nonexempt information was intertwined with exempt information. Portions were also withheld in their entirety because the process of redacting exempt information produced a

meaningless string of words and phrases. No reasonably segregable, nonexempt portions were withheld.

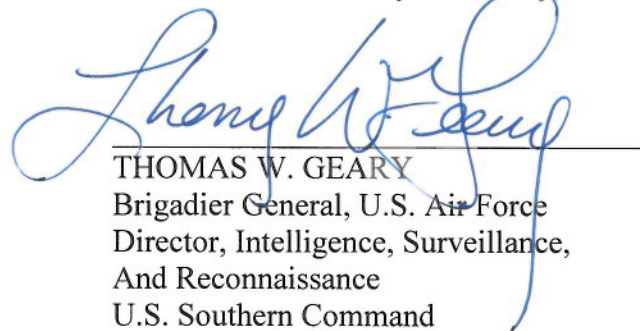
**VAUGHN INDEX**

27. Appended to this declaration is DoD's *Vaughn* index. It provides additional details regarding the appropriateness of DoD's exemption claims.

**CONCLUSION**

28. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28th day of January, 2014.

  
THOMAS W. GEARY  
Brigadier General, U.S. Air Force  
Director, Intelligence, Surveillance,  
And Reconnaissance  
U.S. Southern Command