UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CHARLES ROBERT II, a/k/a Snowflake 5391

PLAINTIFF'S "CORRECTED" AFFIDAVIT EXPLAINING ACTIONS TAKEN IN THE PAST THREE YEARS
Cv –02-6788 (Seybert, J)

Plaintiff,

-against-

THE CENTRAL INTELLIGENCE AGENCY and
THE DEPARTMENT OF JUSTICE

Defendant.
----------X
State of New York)
)
County of Nassau)

Charles Robert being duly sworn swears under penalty of law the following:

1. He makes this Affidavit to comply with the Court's November 28, 2011 Notice of Impending Dismissal for Failure to Prosecute the Action because there has been no docketed activity in this action for over three years. "The docket reflects that there has been no activity by the parties in over three years."

2. This Affidavit is filed to inform the Court that there has been Robert II v CIA and DOJ actions taken by the plaintiff and the co-defendants CIA and DOJ that have not been recorded on the docket sheet. Pursuant to this Court's February 21, 2007 Order, the plaintiff has taken three years of actions seeking the agreement of the co-defendants to participate in a joint quiet settlement conference under the auspices of the Court. See Docket entry 43.

3. This Affidavit is also in support of the plaintiff's December 9, 2011 letter application for permission to file a Supplemental Affidavit by January 13, 2011. On December 5, 2011, Robert II v CIA and DOJ plaintiff's Robert VIII v DOJ, HHS, and SSA petition for a writ of

certiorari was docketed in the Supreme Court. No. 11-684. The petition is posted on the internet at http://snowflake5391.net/Robert8vDOJpetition1.pdf.

4. SG Donald Verrelli has until January 4, 2012 to file a Brief in opposition to the Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari. The plaintiff's proposed Robert II v CIA and DOJ Supplemental Affidavit would provide the Court with plaintiff's detailed plan to prosecute Robert II v CIA and DOJ that will be based in part on AG Holder's Robert VIII v DOJ, HHS, and SSA litigation position as presented in SG Verrelli's Brief that will frame facts and legal issues that will be discussed in the parties' pleadings filed in Robert II v CIA and DOJ.

5. For the reasons explained in this Affidavit, plaintiff also believes that if co-defendant AG Holder provides accurate facts to CIA Director David Petraeus re the DOJ Article II "secret law," then CIA Director Petraeus will accept the quiet settlement in order not to provide false facts to President Obama. See § C below. However, if AG Holder provides false facts to CIA Director Petraeus re the DOJ Article II "secret law" that he is implementing in 2011, then this case will be ripe for plaintiff's prosecution pursuant to the plan suggested at § VV below.

A. The February 21, 2007 Robert II V CIA and DOJ Order and its relationship to Robert VIII v DOJ, HHS, and SSA

6. On February 21, 2007, the Court denied the plaintiff's application for a settlement conference. However, the Court informed the plaintiff it would entertain a future settlement conference upon joint request among the parties for a settlement conference. See Docket Entry 43. The actions taken by the plaintiff over the next three years were based on his sometimes unorthodox attempts to secure a joint agreement with the CIA Director and AG to request a joint settlement conference that could result in a quiet settlement of this FOIA action.

7. The Robert II v CIA and DOJ plaintiff made a litigation decision that his quest for a quiet settlement could be accomplished in Robert VII v DOJ, HHS, and SSA. This decision was

made because of the Robert VIII v DOJ, HHS, and SSA December 14, 2005 Judgment which enjoined Robert from filing a new FOIA request without a pre-clearance Order from Judge Garaufis. See the Robert VIII v DOJ, HHS, and SSA litigation history as explained in the petition for a writ of certiorari Statement of the Case § B pp. 10-19.

8. One set of the Robert VIII v DOJ, HHS, and SSA FOIA requested documents are the "Robert v Holz" documents that AG Holder continues to withhold pursuant to FOIA Exemption 5. Plaintiff asserts that those documents reveal that a "fraud upon the court" was committed in Robert v Holz, because USG attorneys intentionally withheld material facts from Judge Wexler re the reasons why Robert was the target of a three year "Fraud Against the Government" investigation that was initiated by HHS General Counsel del Real to secure the incarceration and disbarment of an attorney challenging his HHS "nonacquiescence" policies. Plaintiff asserted that the "Robert v Holz" documents were connect-the-dots documents with the Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007), "FISC Robert" documents, that were withheld pursuant to 2004 OIPR Director James Baker's ratification of the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. Those documents reveal whether Robert had been the illegal target of a domestic CIA-NSA Terrorist Surveillance Program (TSP) that Robert asserted was in serial violation of federal laws.

9. One set of the Robert VIII v DOJ, HHS, and SSA FOIA requested documents are the "Ruppert" documents that AG Holder continues to withhold pursuant to FOIA Exemption 5. Plaintiff asserts that those documents reveal how the "Ruppert nonacquiescence policy" had been implemented and applied to the millions of April 9, 1994-December, 2011 certified Ford v. Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999), nationwide class members. The plaintiff asserted that these are connect-the-dots documents with other FOIA requested documents that

the CIA has classified pursuant to FOIA Exemptions 1 and 3. These documents reveal the off-OMB Budget HHS funding source for CIA domestic "black operations" including the "immaculate construction" and maintenance of the pre-9/11 NSA TSP data banks that could not be funded with classified OMB Budget funds because of each President's § 413 (a) of the National Security Act duty to report to Congress CIA covert operations.

10. Another reason for plaintiff's application to file a January 13, 2011 Supplemental Affidavit, is in order to cite CIA Director Petraeus to other classified documents that are related to the classified "North Notebook" documents being sought in Robert II v CIA and DOJ, after SG Verrelli files the Robert VIII v DOJ, HHS, and SSA Brief in opposition to the petition for a writ of certiorari. CIA Director Petraeus will know whether AG Holder informs the Supreme Court of the FISA "secret law" that he is implementing in 2011 as cited to the Supreme Court in the petition for writ of certiorari at Statement of Facts § H, p. 28-34. If AG Holder does not inform the Supreme Court of the FISA "secret law" that he reclassified on March 18, 2011, then this is an admission that he is implementing the Article II "secret law" of AG Meese upon which CIA Director Casey's domestic 1980s "black operations" at International Medical Center, Inc. (IMC) and NSA were based. Plaintiff believes that when CIA Director Petraeus reads the CIA classified documents cited in the Supplemental Affidavit, then CIA Director Petraeus will learn that plaintiff's almost incredible 1985-2011 allegations are true, and recommend that AG Holder, his attorney, accept plaintiff's long standing quiet settlement offer. See § C below

11. Plaintiff also believes that if CIA Director Petraeus reads the cited CIA classified documents, then he will not only agree to the quiet settlement, but will recommend that President Obama file a § 413 (b) of the National Security Act "corrective action" plan to cure the illegal intelligence activities revealed in the classified documents to which plaintiff will have cited in a

January 13, 2011 Supplemental Affidavit. CIA Director Petraeus will have learned SG Verrelli's Robert VIII litigation position taken as to informing the Supreme Court of the FISA "secret law" explained in the March 18, 2011 reclassified May 6, 2004 OLC FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft. CIA Director Petraeus can seek guidance from President Obama if he learns that AG Holder has not informed the Supreme Court of the FISA "secret law" explained in the reclassified May 6, 2004 OLC Memo and he learns that a *faux* "Commander in Chief" has been implementing the FISA "secret law" with the knowledge of AG Holder, but without the knowledge of President Obama.

B. Plaintiff's litigation strategy to secure a quiet settlement in order to protect the reputations of the 1982-2011 EDNY U.S. Attorneys, by applying former-DOD Secretary Rumsfeld's analysis of "known-known", "known-unknown", and "unknown-unknown" facts to the "known-known" and "unknown-unknown" facts the 1985-2011 EDNY U.S. Attorneys did not provide to Article III Judges in the 1985-2011 Robert FOIA actions

12. One of the reasons for the plaintiff's nine year quest for a quiet settlement has been to protect the reputations of the EDNY U.S. Attorneys defending the classified "nonacquiescence" policies of HHS General Counsel del Real that became the Article II "secret law" of AG Meese and his "Unitary Executive" theory disciples. Plaintiff believes U.S. Attorneys Raymond J Dearie (1982-1986), Reena Raggi (1986), Andrew J. Maloney (1986-1992), Mary Jo White (1992-1993), Zachary W. Carter (1993-1999), Loretta E. Lynch (1999-2001), Alan Vinegrad (2001-2002), Roslynn R. Mauskopf (2002-2007), Benton J. Campbell (2007-2008), and Loretta E. Lynch (2009-) have not known of the Article II "secret law" that the 1985-2011 AGs have implemented. If not, then EDNY U.S. Attorney Lynch can ask AG Holder whether he will inform Judge Seybert of the "secret law" being applied in this action.

13. In order to better understand why the plaintiff has been seeking a quiet settlement to protect the reputations of the 1985-2011 EDNY U.S. Attorneys, the Court should consider

applying former DOD Secretary Rumsfeld's historical analysis of "known-known", "known-unknown", and "unknown-unknown" facts to Robert II v CIA and DOJ complaint allegations:

> Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns -- the ones we don't know we don't know.
> http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2636

14. Plaintiff believes that the "known-known" facts of AG Meese's Article II "secret law" have been "unknown-unknown" facts to the EDNY U.S. Attorneys because they did not have Top Secret clearance to learn the "known-known" facts that AG Meese knew. As discussed below in § C, AG Meese's Article II "secret law" was relied upon by President Reagan and Vice President Bush, who were not lawyers, and was one of the reasons for the Iran-Contras scandal. The 1984-1987 legal opinions of AG Meese that explained the legal basis of the Article II "secret law" were "known-known" facts to President Reagan and VP Bush. However, the facts of AG Meese's Article II "secret law" were "unknown-unknown" facts to the public, the 535 Members of the Article I Congress, and all Article III Judges, including the FISC Judges.

15. In Robert II v CIA and DOJ, plaintiff seeks the release of classified "North Notebook" documents that reveal whether AG Meese and FBI Director Webster knew in 1985 that CIA Director Casey was conducting domestic "black operations" at IMC and the NSA that were funded with off-OMB Budget "Jackson nonacquiescence policy" funds. AG Meese knew as a "known-known" fact that these CIA domestic "black operations" could not be funded with classified OMB Budget funds because there was no § 413 (a) of the National Security Act Notification to the "Gang of Eight" that CIA Director Casey was conducting CIA domestic "black operations" at IMC and the NSA. AG Meese knew that violation of the § 413 (a) of the National Security Act Notification duty re CIA domestic "black operations" was an impeachable

violation of federal law because the CIA was statutorily barred from conducting domestic "black operations" because all of its covert operations were to be foreign. AG Meese knew that the 1985 use of unaudited HHS funds to pay for the medical supplies and treatment of the Contras at IMC was a violation of the Boland Amendment. AG Meese also knew that the 1985 data mining by the NSA TSP was a violation of the "exclusivity provision" of the FISA.

16. Thus, with 2012 20-20 hindsight and the application of former-DOD Secretary Rumsfeld's "known-known", "known-unknown", and "unknown-unknown" historical prism, it is not a difficult task to learn whether the 1985-2011 EDNY U.S. Attorneys contemporaneously did not know the "known-known" facts of AG Meese's Article II "secret law" during the 1985-2011 Robert FOIA litigation. However, what may have been 1985-2011 "unknown-unknown" facts to the 1985-2011 EDNY U.S. Attorneys, will become 2012 "known-known" facts to 2012 EDNY U.S. Attorney Lynch. Hence, plaintiff's belief that his proposed litigation plan will result in U.S. Attorney Lynch persuading her clients, CIA Director Petraeus and AG Holder, to agree to participating in a settlement conference conducted by this Court. See § WW below.

C. IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" document which may lead to the quiet settlement

17. On November 26, 2011, the National Security Archive posted on its website Iran-Contras Independent Counsel (IC) Lawrence Walsh's staff's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" that the non-profit agency secured pursuant to a FOIA request. IC Walsh determined that President Reagan and VP Bush had no Iran-Contras criminal liability because they had relied upon AG Meese's legal opinions. "The reason, said Mr. Mixter, was that Mr. Meese had told Mr. Reagan that the National Security Act could be invoked to supersede the export control act. 1991 Report Said Reagan Not

Liable in Arms Deal, NY Times 11-26-11. See Document 1-Parts 1-4 posted at the end of the introductory overview at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB365/index.htm

18. Although not cited in the Robert VIII v DOJ, HHS, and SSA November 30, 2011 petition for a writ of certiorari, the Robert II v CIA and DOJ plaintiff has placed EDNY U.S. Attorney Lynch and SG Verrelli on Notice that they have a duty to read this document which explains the Article II "secret law" of AG Meese that was contained in his legal opinions provided President Reagan and VP Bush. Robert VIII v DOJ, HHS, and SSA petitioner placed SG Verrelli on Notice of his duty to read the March 18, 2011 reclassified May 6, 2004 FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft, and then determine whether AG Meese's FISA "secret law" not reported to Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VII v DOJ, should be reported to the Supreme Court in the USG's Robert VIII v DOJ, HHS, and SSA Brief in opposition to the petition for a writ of certiorari.

19. This November 26, 2011 internet posting enhances plaintiff's belief that CIA Director Petraeus will agree to a quiet settlement. This document is a 1991 "Past is Prologue" explanation that applies to President Obama, a former-Constitutional Law Professor, if President Obama has been relying upon the same Article II FISA "secret law" of AG Meese that is at issue in Robert VIII v DOJ, HHS, and SSA. AG Holder will advise CIA Director Petraeus whether AG Holder ratified AG Meese's 1985 Mitchell v Forsyth, 105 S.Ct. 2806 (1985), "nonacquiescence" policy when on March 18, 2011 he reclassified the May 6, 2004 FISA Memorandum as to pages that revealed AG Meese's Top Secret FISA law. See the Robert VIII v DOJ, HHS and SSA petition for writ of certiorari Statement of Facts § H.

20. However, if AG Holder advises CIA Director Petraeus that he does not agree with the Top Secret Article II FISA "secret law" explained in the May 6, 2004 FISA Memo, then

CIA Director Petraeus will have to decide whether he intends to defend the Article II "secret laws" that were withheld from Judge Seybert, as did CIA Director George J. Tenet (July 11, 1997-July 11, 2004) in Robert v CIA, 00-cv-04325 (Seybert, J) and Robert II v CIA and DOJ before and after May 6, 2004 when AAG of the OLC Goldsmith sent his Top Secret FISA Memorandum to AG Ashcroft. CIA Director Petraeus may ask 2002-2004 CIA Assistant General Counsel A. John Radsan whether CIA Director Tenet knew the "secret law" explained in the May 6, 2004 OLC FISA Memo. See "Sed Quis Cotodiest Ipsos Custsodes: The CIA's Office of General Counsel?" Journal of National Security Law & Policy, Vol.2:201 (2008). http://www.mcgeorge.edu/Documents/publications/jnslp/01_Radsan%20Master%2009_11_08.pdf. (English translation: who watches the watchers?).

21. If the fact determinations made by IC Walsh in the March 21, 1991 Memorandum re former-President Reagan and VP Bush, are applied to the facts CIA Director Tenet provided Judge Seybert in the Robert II v CIA and DOJ FRCP 11 signed pleadings filed in support of CIA Director Tenet's February 7, 2003 Motion to Dismiss, then CIA Director Petraeus will understand his own liability as the 2012 CIA Director if he is bound by facts presented in those FRCP 11 signed pleading filed by CIA General Counsel Scott Muller (2002-2004) on behalf of CIA Director Tenet. CIA Director Petraeus has a duty to present Judge Seybert with an accurate representation of the facts and law in support of the CIA's 2012 Motion to Dismiss.

22. CIA General Counsel Stephen Preston will advise CIA Director Petraeus whether CIA Directors Porter J. Goss (September 24, 2004-April 21, 2005), General Michael Hayden (May 30, 2006-February 12, 2009), and Leon Panetta (February 12, 2009-June 30, 2011), had relied upon AG Meese's Article II "secret law" as explained in AG Gonzales' December 22, 2005 § 413 (a) of the National Security Act retroactive Notification to the "Gang of Eight" as

to the 2001-2005 post-9/11 NSA TSP, but not as to notification of the 1984-2001 pre-9/11 NSA TSP that had been established by CIA Director Casey and NSA Director General William Odom (1985-1988). See http://www.fas.org/irp/agency/doj/fisa/doj122205.pdf. This is a critical December 22, 2005 fact because CIA Director General Hayden had been the 1999-2005 NSA Director who knew that there had been NSA data mining of the pre-9/11 NSA TSP data banks without Notification to the "Gang of Eight" or to the FISC.

23. CIA General Counsel Preston will inform CIA Director Petraeus whether from his reading of IC Walsh's March 21, 1991 Memo, President Obama is at risk because he is an attorney who knows the legal significance of violation the "exclusivity provision" of the FISA as revealed in the Article II FISA "secret" law. CIA General Counsel Preston knows whether President Obama has a § 413 (b) of the National Security Act to file a "corrective action" plan if CIA agents had access to the NSA data mining of the domestic pre-9/11 NSA TSP data banks for which there has never been § 413 (a) of the National Security Act Notification to the "Gang of Eight" by any President. Since CIA Director Petraeus knows that Robert VII v DOJ "FISC Robert" documents were withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response' defense, he knows those documents reveal whether CIA Director Casey knew that he had violated the "exclusivity provision" of the FISA when he secured information from NSA military officers who had data mined the domestic NSA TSP data banks.

24. If the March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" document was an "unknown-unknown" fact to the 1991-2011 EDNY U.S. Attorneys, then this provides an extraordinary opportunity for EDNY U.S. Attorney Lynch to present plaintiff's quiet settlement offer to CIA Director Petraeus, her client. If AG Holder informs CIA Director Petraeus, his client, that he does not agree with the March 18,

2011 reclassified May 6, 2004 OLC FISA Memo that contains an explanation of the AG Meese's *de jure* or *de facto* Mitchell v Forsyth, 105 S.Ct. 2806 (1985) "nonacquiescence" policy, then this would mean that AG Holder knows that he does not have an "absolute immunity" defense if 1997-2001 DAG Holder had known of NSA data mining of the pre-9/11 NSA TSP data banks that was never reported to the "Gang of Eight" or FISC. If AG Holder decides that AG Meese's Mitchell v Forsyth "nonacquiescence" policy should end, then CIA Director of Petraeus should know this fact when he reads the Robert VII "FISC Robert" documents the CIA FOIA Officer withheld pursuant to FOIA Exemption 1 and the "Glomar Response" defense.

25. AG Holder can advise CIA Director Petraeus whether IC Walsh's March 21, 1991 Memorandum as to President Reagan's reliance upon the accuracy of AG Meese's legal opinions, corroborates Robert VIII v DOJ, HHS, and SSA petitioner's assertion in his petition for writ of certiorari, that AG Meese knew that there were serial violations of the Boland Amendment, § 413 (a) of the National Security Act, 50 U.S.C. § 413, the "exclusivity provision" of the FISA, 18 U.S.C. § 2511(2)(f), the domestic limitations on military law enforcement of the Posse Comitatus Act, 18 U.S.C. § 1385, and the Social Security Act, 42 U.S.C. §1381. AG Holder can advise CIA Director Petraeus whether AG Holder agrees with AG Meese that these federal laws could be interpreted as being "unconstitutional" laws because they encroached upon the President's Article II duty to protect the nation from terrorists.

26. Thus, the plaintiff believes the fact that IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" became a public document on November 25, 2011, increases the probability that CIA Director Petraeus will instruct his attorneys, CIA General Counsel Stephen Prescott and AG Holder, to enter into negotiations for a quiet settlement. Plaintiff's belief is based on the fact that CIA Director

Petraeus will not lie to President Obama or to a Congressional Oversight or to an Article III Judge if he knows that CIA Director Casey had conducted illegal domestic NSA TSP "black operations" at IMC and the NSA based on the "Unitary Executive" legal opinions of AG Meese.

D. The 2000 "known-known" knowledge of DAG Holder and EDNY U.S. Attorney Lynch of AG Meese's Article II "secret law" in Robert v CIA when CIA Director Tenet instructed the CIA General Counsel to file an August 30, 2000 Motion to Dismiss Robert v CIA and not inform Judge Seybert of AG Meese's Article II "secret law"

27. Plaintiff asserts that in 2000 CIA Director Tenet (1997-2004) knew as a "known-known" fact that the classified "North Notebook" documents that plaintiff sought in Robert v CIA, cv 00-cv-04325 (Seybert, J), revealed that AG Meese and FBI Director Webster knew in 1985 that CIA Director Casey was conducting illegal domestic "black operations" at IMC and the NSA. Plaintiff also asserts that CIA Director Tenet knew in 2000 whether in 1985 HHS General Counsel del Real had been CIA Director Casey's covered agent when he conducted the "Fraud Against the Government" investigation of Robert to eliminate an attorney challenging the "Jackson nonacquiescence policy" of HHS General Counsel del Real that generated HHS funds to pay for CIA Casey's domestic "black operations" that CIA Director Tenet knew could not be funded with classified OMB Budget funds because the domestic CIA operations were illegal.

28. Plaintiff alleges, upon information and belief, that in 2000 U.S. Attorney Lynch did not know the "known-known" facts that CIA Director Tenet knew in Robert v CIA re the HHS General Counsel del Real's "Fraud Against the Government" investigation of Robert to secure Robert's incarceration and disbarment. In 2000, these were "unknown-unknown" facts to U.S. Attorney Lynch because she did not have Top Secret clearance to know why the "North Notebook" documents were classified. This is an important 2000 time line fact because 2012 U.S. Attorney Lynch can read the Robert VIII v DOJ, HHS, and SSA "Robert v Holz" documents being withheld pursuant to FOIA Exemption 5, and not as classified documents

withheld pursuant to FOIA Exemption 1 or the "Glomar Response" defense. If U.S. Attorney Lynch reads the "Robert v Holz" documents and learns that material facts had been withheld from Judge Wexler, then she has a duty to inform Judge Wexler and this Court. See § WW.

29. The August 30, 2000 knowledge of DAG Holder and EDNY U.S. Attorney Lynch as to why CIA Director Tenet filed his August 30, 2000 Robert v CIA Motion to Dismiss, is an important connect-the-dots- time line fact because of the August 30, 2000 knowledge of DAG Holder and EDNY U.S. Attorney Lynch of the August 30, 2000 DOJ litigation positions in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), and Ford v Shalala. In Robert v CIA, U.S. Attorney Lynch vigorously opposed plaintiff's request that the case be dismissed without prejudice. U.S. Attorney Lynch sought a dismissal with prejudice in order that plaintiff could not file a new FOIA complaint seeking the classified "North Notebook" documents. See Docket Entries 8-19.

30. In Robert v National Archives, the plaintiff sought the "FBI Agent Allison" documents which were the documents in the custody of FBI Agent Allison when she conducted her March 29, 1989 interview of Robert in the Office of Independent Counsel Lawrence Walsh re Robert's allegation that there had been a Boland Amendment violation if December, 1985-1987 IMC Chief of Staff Juan del Real administered unaudited HHS funds to pay for the medical supplies and treatment of the Contras. FBI Agent Allison was FBI Director Sessions' FBI liaison to IC Walsh. FBI Director Sessions (1987-1993) had replaced FBI Director Webster when he became President Reagan's CIA Director on May 26, 1987. Plaintiff sought the release of the "FBI Agent Allison" documents to prove to Judge Wexler that in Robert v Holz EDNY AUSA M. Lawrence Noyer (deceased) had intentionally withheld material facts so that Judge Wexler would not know that HHS General Counsel del Real was CIA Director Casey's covered

agent when initiated the "Fraud Against the Government" investigation of Robert seeking to eliminate the attorney challenging HHS General Counsel del Real's "Jackson nonacquiescence policy" that was implemented in the pending Ruppert litigation. The Robert v DOJ complaint was filed without the plaintiff's knowledge of IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush."

` 31. In Robert v DOJ, the plaintiff sought the release of the "FBI Agent Allison", "FBI 62-0", "Starr", "Bromwich", "OPR Rogers", "Kuhl", "Diaz", "AAG Hunger-Gordon", "Begleiter", "Noyer", "Albray", "Mikva", and "Charles Robet criminal investigation file" documents. The plaintiff sought this mosaic of documents to prove to Judge Wexler that in Robert v Holz EDNY AUSA M. Lawrence Noyer (deceased) had intentionally withheld material facts so that Judge Wexler would not know that HHS General Counsel del Real was CIA Director Casey's covered agent when initiated the "Fraud Against the Government" investigation of Robert. The DOJ did not use any classified FOIA classification to withhold any of these documents. Therefore, there was no classification bar to DOJ attorneys reading the documents to determine whether plaintiff's almost incredible allegations made in his complaint were true.

32. In Ford v Shalala, EDNY U.S. Attorney Lynch had filed a Notice of Appeal of Judge Sifton's September 29, 1999 decision which included a April 9, 1994 certification of a nationwide class of millions of aged, blind, and disabled SSI recipients. In 2000, U.S. Attorney Lynch filed a series of applications to the Second Circuit to extend the time for HHS Secretary Shalala to perfect the Ford v Shalala appeal. Upon information and belief, sometime in September, 2000, DAG Holder made the final DOJ decision that HHS Secretary Shalala would not perfect EDNY U.S. Attorney Lynch's Notice of Appeal. As a result of the decision not to perfect the Ford appeal, the Second Circuit dismissed the 2000 Ford v Shalala appeal.

33. If DAG Holder knew in 2000 that HHS General Counsel del Real had been CIA Director Casey's covered agent when he initiated the "Fraud Against the Government" investigation of Robert, then this would mean that a DOJ litigation decision was made in September, 2000 not to acquiesce to Judge Sifton's Ford v Shalala nationwide class decision because of a national security risk. DAG Holder knew that acquiescence to the Ford decision would end the "Jackson nonacquiescence policy" of HHS General Counsel del Real as applied to Ford class members. CIA Director Tenet knew this would dry up the unaudited off-OMB Budget SSI funds needed to pay for the "immaculate construction" of the NSA TSP data banks that DAG Holder and CIA Director Tenet knew could not be funded with classified OMB funds because of the violations of § 413 (a) of the National Security Act, the FISA, and the PCA.

33. Evidence of this almost incredible Ford v Shalala allegation is the fact that over twelve (12) years has passed and the Ford v Shalala due process violations have not been cured. AG Holder and U.S. Attorney Lynch know why SSA Commissioner Astrue has continued during President Obama's Constitutional watch not to send Ford remedy Notices to the millions of Ford class members that cite to the SSI regulations upon which their benefits are terminated or reduced including the Jackson regulation, 20 C.F.R. § 416.1130 (b). Hence, the importance of the FOIA requested "Ruppert" documents being withheld in Robert VIII v DOJ, HHS, and SSA pursuant to FOIA Exemption 5. Those documents reveal who made the 1990 "Ruppert nonacquiescence policy" decision. That is an important fact because 2011 AAG of the OLC Virginia Seitz knows whether Ruppert is a classified "nonacquiescence" case. See Robert VIII petition § F and President Bush's November 2, 2002 28 U.S.C. § 530D Signing Statement re Report on Enforcement of Laws: Policies Regarding the Constitutionality of Provisions and Non-acquiescence. http://www.presidency.ucsb.edu/ws/index.php?pid=73177.

34. Plaintiff also asserted that CIA Director Tenet knew in 2000 as a "known-known" fact that in 1985 EDNY U.S. Attorney Dearie did not know in Robert v Holz, that HHS General Counsel del Real was CIA Director Casey's covered agent when he conducted the "Fraud Against the Government" investigation of Robert to eliminate the attorney challenging the "Jackson nonacquiescence policy" that was generating the unaudited funds to pay for CIA Director Casey's domestic black operations. Because in 1985 EDNY U.S. Attorney Dearie did not have Top Secret clearance to know whether HHS General Counsel del Real was CIA Director Casey's covered agent during the "Fraud Against the Government" investigation of Robert, EDNY U.S. Attorney Dearie did not know that the "command and control" officer of EDNY AUSA M. Lawrence Noyer (deceased) had in 1986 ordered him to withhold from Judge Wexler the "smoking gun" fact that HHS General Counsel del Real was a covered agent.

35. Therefore, given the gravity of the plaintiff's allegation that in September, 2000 DAG Holder knew why CIA Director Tenet had instructed the CIA General Counsel to file the August 30, 2000 Robert v CIA Motion to Dismiss the FOIA seeking the classified 'North Notebook" documents, CIA Director Petraeus can ask AG Holder, his attorney, flat out whether a September, 2000 DOJ classified litigation decision had been made in Ford v Shalala not to acquiesce to Judge Sifton's September 29, 1999 Ford decision in order to protect the funding source for the pre-9/11 NSA TSP data banks. If CIA Director Petraeus learns the 2000 Robert v CIA and Ford litigation decisions were coordinated, then there will be a 2012 quiet settlement.

E. CIA Director Tenet's February 7, 2003 Robert II v CIA and DOJ Motion to Dismiss the complaint and the accuracy of the USG's FRCP 11 signed pleadings including any "c (3) exclusion" *ex parte* Declarations that did not inform the Court of DOJ Article II "secret law" that USG attorneys withheld from Article III Judges to deceive the Judges

36. Plaintiff asserts that AG Holder and U.S. Attorney Lynch have an affirmative duty to inform the Court if CIA Director Tenet instructed the CIA General Counsel to file the CIA's

February 7, 2003 Robert II v CIA and DOJ Motion to Dismiss the FOIA action, but not to inform Judge Seybert the "secret law" established by AG Meese's legal opinions. See Robert II v CIA and DOJ Docket entries 3, 4. These are facts that AG Holder and U.S. Attorney Lynch can learn by reading the DOJ's Robert II v CIA and DOJ 2003 case file notes and communicating with CIA Director Petraeus' CIA General Counsel Stephen Preston. He can read the CIA's Robert II v CIA and DOJ 2003 case file notes. Those DOJ and CIA case files notes reveal the names of USG attorneys who knew the what and when of AG Meese's Article II "secret law."

37. February, 2003 was a meaningful CIA and NSA month because it was after 9/11 and the post-9/11 NSA TSP was being implemented without any § 413 (a) National Security Act Notification to the "Gang of Eight" which would have triggered the use of classified OMB funds to pay for the post-9/11 NSA TSP data banks. CIA Director Tenet and CIA General Counsel Muller knew whether NSA Director Hayden's analysts were data mining the 1984-2001 pre-9/11 NSA TSP data banks seeking digital connections to learn the names of surviving co-conspirators in the 9/11 attack that the CIA knew had involved years of domestic planning.

38. Upon information and belief, AG Ashcroft filed a FOIA "c (3) exclusion" *ex parte* Declaration and informed the Court that CIA Director Tenet would use the "Glomar Response" defense to withhold classified "North Notebook" documents. These *ex parte* "c (3) exclusion" Declarations were to comply with AG Meese's December, 1987, Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act:

> Accordingly, it shall be the government's standard litigation policy in the defense of FOIA lawsuits that wherever a FOIA plaintiff raises a distinct claim regarding the suspected use of an exclusion, the government routinely will submit an in camera declaration addressing that claim, one way or another. Where an exclusion was in fact employed, the correctness of that action will be justified to the court. Where an exclusion was not in fact employed, the in camera declaration will simply state that fact, together with an explanation to the judge of why the very act of its

> submission and consideration by the court was necessary to mask whether that is or is not the case. In either case, the government will of course urge the court to issue a public decision which does not indicate whether it is or is not an actual exclusion situation. Such a public decision, not unlike and administrative appeal determination of an exclusion-related request for review, should specify only that a full review of the claim was undertaken and that, if an exclusion in fact was employed, it was and continues to remain, amply justified. Id. at 20. Emphasis Added. http://www.usdoj.gov/04foia/86agmemo.htm.

39. Upon information and belief, if AG Ashcroft or CIA General Counsel Muller filed "c (3) exclusion" *ex parte* Declarations, then those *ex parte* Declarations did not inform the Court of AG Meese's Article II "secret law" legal opinions as explained in IC Walsh's staff's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush." If not, then this is a key fact for the Court to know because 1999-2005 NSA Director General Hayden became the 2006-2009 CIA Director co-defendant. CIA Director Hayden knew that NSA Director Hayden knew that the data mining of the pre-9/11 NSA TSP data banks was an "unknown-unknown" fact to the Article III Judges in Robert VII v DOJ.

40. The *mens rea* fact issue of what the USG attorneys assigned to Robert II v CIA and DOJ knew and when they knew it, became an important time line fact as to the following:

> 1. The March 1, 2004 decision of OIPR Counsel Baker to affirm the CIA's use of FOIA Exemption 1 and the "Glomar Response" to withhold the "FISC Robert" documents.
>
> 2. The March 10, 2004 confrontation between WH Counsel Gonzales and AG Ashcroft, DAG Comey, and FBI Director Mueller in AG Ashcroft's hospital room re the NSA TSP.
>
> 3. The April 9, 2004 Robert II v CIA and DOJ Report and Recommendation of Magistrate Lindsay staying the action until plaintiff provided the Court with a list of all of his FOIA actions filed in the Eastern and Southern Districts of New York. Docket Entry 19.
>
> 4. The May 9, 2004 Top Secret OLC Memorandum from AAG of the OLC Jack Goldsmith to AG Ashcroft.

41. A review of the DOJ and CIA case file notes and cross checking with the Robert list of FOIA cases provided the Robert II v CIA and DOJ Court, reveals the names of the USG attorneys in those cases who knew why HHS General Counsel del Real had initiated the "Fraud Against the Government" investigation of Robert, and why Robert was the target of the NSA TSP. CIA Director Petraeus should know the names of these USG attorneys so that he can provide accurate facts to President Obama if he recommends that the President should in 2012 file a § 413 (b) "correction plan" to cure the CIA illegal domestic intelligence activities.

42. AG Holder should determine whether any of these USG attorneys breached the NYS Judiciary Law Judiciary Law § 487, Misconduct by attorneys, penal standard that is applied to attorneys who deceive Judges and parties. "1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;" Emphasis Added. This would include USG attorneys who deceived Magistrate Judge Lindsay and Judge Seybert.

43. CIA Director Petraeus' knowledge of CIA Director Tenet's February 7, 2003 Motion to Dismiss and the CIA General Counsel's case filed notes, may result in the long sought after quiet settlement. If not, then these CIA *mens rea* facts will fuel the prosecution of the complaint.

F. Time line facts after the February 21, 2007 Robert II v CIA and DOJ Order denying plaintiff's request for a settlement conference

44. In the remainder of this Affidavit, the plaintiff explains a time line of events and actions that formed the basis of the plaintiff's belief that pursuant to this Court's February 21, 2007 Order, the CIA Director and the AG would at some point voluntarily agree to participate in a settlement conference that would lead to the withdrawal of this FOIA action.

45. An important post February 21, 2007 time line fact is the 2007-2011 knowledge of CIA General Counsels (Acting) John Rizzo and Stephen Preston that 2006-2009 CIA Director General Hayden knew of NSA TSP data mining when he was 1999-2005 NSA Director

Hayden. CIA General Counsels Rizzo and Prescott knew that CIA Director General Hayden knew why AG Gonzales had waited until December 22, 2005 to retroactively inform the "Gang of Eight" of the existence of the post-9/11 NSA TSP, but not inform the "Gang of Eight of the pre-9-11 NSA TSP. These are CIA General Counsels Rizzo and Prescott *men rea* "smoking gun" time line facts because they also knew that on March 10, 2004 NSA Director General Hayden knew that WH Counsel Gonzales had withheld material facts re NSA Director Hayden's data mining of the pre-9/11 NSA TSP, from AG Ashcroft, DAG Comey, and FBI Director Mueller during the confrontation of AG Ashcroft's hospital room and after. CIA General Counsels Rizzo and Prescott knew that CIA Director General Hayden knew the FISA "secret law" legal opinions of AG Meese that were explained in the Top Secret May 6, 2004 FISA OLC Memorandum sent to AG Ashcroft. They knew that throughout the Robert VII v DOJ litigation, this Article II FISA "secret law" remained as an "unknown-unknown" FISA law to Judge Garaufis, the Second Circuit, and Supreme Court.

46. Plaintiff believed that because AG Gonzales was the defendant in both Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA, that at some point the AG would agree to a quiet settlement. The Robert II v CIA and DOJ plaintiff knew that the Robert VIII FOIA requested "Robert v Holz", "Ruppert", "Barrett nonacquiescence policy", "Christensen nonacquiescence policy", and "IMC Investigation Final Report" documents, were connect-the-dots documents to the classified Robert II v CIA "North Notebook" documents that contained "known-known" facts to CIA Director Michael Hayden because he had been the 1999-2005 NSA Director. The plaintiff knew that CIA Director General Hayden knew that CIA General Counsel Rizzo knew that CIA Director Casey and his successor CIA Director Webster (May 26, 1987-August 31, 1991), knew that the NSA Directors had data mined NSA TSP data banks

without reporting the data mining to the FISC or to the "Gang of Eight" in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on military domestic law enforcement, based on AG Meese's legal opinions. Plaintiff knew that CIA Director Hayden knew that CIA General Counsel Rizzo knew that AG Gonzales had deceived the Second Circuit in his April 3, 2006 Brief by not informing the Court that Robert had been the target of the pre-9/11 NSA TSP and had been an "aggrieved person" by application of 50 U.S. C. § 1806 (f). They all knew that this deception then included the Supreme Court.

47. Thus, plaintiff believed that that AG Gonzales would settle Robert II v CIA and DOJ because he knew that his co-defendant CIA Director General Hayden knew of the serial impeachable violations of § 413 (a) of the National Security Act because CIA Director Hayden knew that Presidents George W. Bush had not informed the "Gang of Eight" of the pre-9/11 NSA TSP or filed a § 413 (b) corrective action plan to cure the illegal intelligence activities. AG Gonzales knew that these illegal intelligence activities included NSA Director Hayden data mining the pre-9/11 NSA TSP data banks and targeting U.S. citizens without FISC warrants.

G. The August 21, 2007 decision of DOD Secretary Gates and Under Secretary of Defense Intelligence Lt. General Clapper to end the DOD TALON Program

48. On August 21, 2007, DOD Secretary Robert Gates and Under Secretary of Defense Intelligence Lt. General Clapper informed the public that on September 17, 2007 the DOD Counterintelligence Field Activity (CIFA) Threat And Local Observation Notice (TALON) system program would be terminated. They informed the public that the DOD would retain a copy of the collected data. The public was not informed that the data banks would be destroyed.

49. The August 21, 2007 DOD Press Release stated in its entirety:

DoD to Implement Interim Threat Reporting Procedures

> DoD's Counterintelligence Field Activity (CIFA) will close the TALON Reporting System effective Sept. 17, 2007, and maintain a record copy of the collected data in accordance with intelligence oversight requirements.
>
> To ensure there is a mechanism in place to document and assess potential threats to DoD resources, the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs will propose a system to streamline such threat reporting and better meet the Defense department's needs.
>
> In the interim, until this new reporting program is adopted, DoD components will send information concerning force protection threats to the Federal Bureau of Investigation's Guardian reporting system. http://www.defenselink.mil/releases/release.aspx?releaseid=11251.

50. The Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA plaintiff believed that the termination of the TALON program would increase the probability of a quiet settlement. This was because DOD Secretary Gates had been the 1982-1986 CIA Deputy Director for Intelligence, the 1986-1989 CIA Deputy Director, and the 1991-1993 CIA Director. DOD Under Secretary of Defense Intelligence Lt. General Clapper had been the 1992-1995 DIA Director. They both knew that the NSA Directors' analysts had illegally data mined the pre-9/11 NSA TSP data banks in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and the PCA limitations on domestic military law enforcement. They would want CIA Director Hayden to bury the trail of the data mining of NSA TSP data banks.

H. The September 28, 2007 FOIA request to the President Ronald Reagan Library for the release of the February 25, 1987 "Perot" documents

51. On September 28, 2007, the Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA plaintiff filed a FOIA request with the Archivist of the President Ronald Reagan Library for the "February 25, 1987 Ross Perot documents and resulting final investigation Report of AG and FBI Director documents." The plaintiff believed that these were connect-the-dots

documents with the September 6, 1985 "Perot" Robert II v CIA and DOJ classified "North Notebook" document. That document is posted at http://snowflake5391.net/perot.pdf.

52. The NARA "Perot" documents are the documents that Mr. H. Ross Perot handed to President Reagan on February 24, 1987 four days before the public release of the Article II February 28, 1987 Tower Commission Report. On February 25, 1987 President Reagan decided to present the "Perot" documents to AG Meese and FBI Director Webster. These facts were revealed in the Reagan Diaries, HarperCollins, 2007, which was edited by historian Douglas Brinkley. President Reagan made the following Diary entry for February 24, 1987:

> Then upstairs for an hour with Ross Perot. He has laid on me a story of chicanery & corruption in our executive branch including the mil. & CIA. It's a shocker & and has me asking where do I start. Of course all he told me was based on circumstantial evidence. Id. 477. Emphasis Added.

53. On February 25, 1987, as recorded in his Diary, President Reagan presented the Ross Perot allegation and documents to AG Meese and FBI Director Judge Webster:

> Well this A.M. I had talked to Ed M. Im going to turn this over to him & and our Dir. of the FBI. First however I'm going to give it all a good going over –the material Ross left with me. Id. 478. Emphasis Added.

54. The Robert II v CIA and DOJ plaintiff informed the President Ronald Reagan Library FOIA Officer that the NARA "Perot" FOIA request was related to the FOIA requested "North Notebook" documents. Ross Perot's Electronic Data Systems (EDS) processed all HHS provider payments including payments the Florida HMO International Medical Center, Inc. where in December, 1985 HHS General Counsel del Real became IMC Chief of Staff. Robert advised that the "Perot" documents were related to the DOJ "IMC Investigation Final Report" documents being sought in Robert v DOJ, HHS, and SSA, cv 05-2543 (Garaufis, J). He advised that the "Perot" documents were related to the NARA College Park, Maryland request for the "Peter Keisler Collection" documents, OA 16033: Legal Analysis Contra Aid laws,

Congress Notification, and Application States re: Contras, filed with the NARA College Park FOIA Officer F07-014. He advised that these documents were related to NARA College Park FOIA request for the Robert v National Archives "Bulky Evidence File" documents. NW 29213.

55. The President Ronald Reagan Library FOIA Officer advised the Robert II v CIA and DOJ plaintiff that this FOIA request was subject to the President Records Act and the use of executive privilege by a representative of the Estate of President Reagan. That decision was appealed and a final formal decision has not been rendered.

I. The April 30, 2008 Senate Judiciary testimony of ISOO Director Leonard

56. On April 30, 2008, former-NARA Director J. William Leonard of the Information Security Oversight Office (ISSO), testified before the Senate Judiciary Committee at the Secret Law and the Threat to Democratic and Accountable Government. As the ISOO Director, he was tasked with protecting classified documents by application of the standards established in President Clinton's April 17, 1995 Executive Order 12958, Classified National Security Information, as amended by President Bush's March 25, 2003 Executive Order 13292.

57. Former-NARA ISSO Director Leonard framed the "secret law" issue on April 30, 2008:

> The ability of President's authority to act unilaterally are defined by the willingness and ability of the Congress and the courts to constrain it. Of course, before the Congress or the courts can act to constrain Presidential claims to inherent unilateral powers, they must first be aware of those claims. Yet, a long recognized power of the President is to classify and thus restrict the dissemination of information in there interest of national security. The combination of these two powers of the President-that is, when the President lays claim to inherent powers to act unilaterally, but does so in secret—can equate to the very open-ended, non-circumscribed, executive authority that the Constitution's framers sought to avoid in constructing a system of checks and balances. Added to this is the reality that the President is not irrevocably bound by his own Executive orders, and this administration claims that President can depart from the terms of an Executive Order without public notice. Thus, at least in theory, the President could authorize the classification of the OLC memo, even though to do so would violate the standards of his own Executive Order.

> Equally possible, the president could change his Executive Order governing secrecy, and do so in secret, all unbeknownst to the Congress and the courts. It is as if Lewis Carroll, George Orwell, and Franz Kafka jointly conspired to come up with the ultimate recipe for unchecked executive power. Id. 8. http://judiciary.senate.gov/hearing.cfm?id=3305. Emphasis Added.

58. This was important testimony for the Robert II v CIA and DOJ plaintiff because it came from an Article II "secret law" insider who verified the almost incredible fact that there is an Article II "secret law" that is being enforced without the knowledge of the Article I Congress or the Article III Judges. His "secret law" conclusion bears repeating on December 12, 2011. "It is as if Lewis Carroll, George Orwell, and Franz Kafka jointly conspired to come up with the ultimate recipe for unchecked executive power." Id. 8. Emphasis Added.

59. In his Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari, petitioner is arguing that the petition should be granted in order that the Supreme Court can review the FISA "secret law" that was an Article II "unknown-unknown" law to Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VII v DOJ. If the petition is granted, then petitioner will highlight former-ISOO Director Leonard's framing of the "secret law" issue.

J. The May 9, 2008 Robert VIII v DOJ, HHS, and SSA decision of Judge Garaufis

60. On May 9, 2008, Judge Garaufis issued a Robert VIII v DOJ, HHS, and SSA decision that partially granted AG Mukasey's Summary Judgment Motion. However, Judge Garaufis ordered the AG to conduct a supplemental due diligence search for the "Barrett nonacquiescence policy", the "Christensen nonacquiescence policy", and the joint FBI-DOJ-HHS task force "IMC Investigation Final Report" documents that AG Gonzales' FOIA Officers could not locate.

61. AG Mukasey's FOIA Officer conducted an unsuccessful supplementary due diligence search for the "Barrett nonacquiescence policy" by reviewing EOUSA computer indexes and not OLC indexes. The DOJ FOIA Officer did not contact AAG of the OLC (Acting) Steven

Bradbury (2005-2008) to locate this "nonacquiescence" case policy document. He had the 28 U.S.C. § 530D duty to report all "nonacquiescence" cases to Congress. He also had the duty to retain all of the classified OLC documents for cases which were not reported to Congress based on President Bush's November 2, 2002 Presidential Signing Statement. Statement re Report on Enforcement of Laws: Policies Regarding the Constitutionality of Provisions and Non-acquiescence. http://www.presidency.ucsb.edu/ws/index.php?pid=73177. See Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari at Statement of the Case § E.

62. AG Mukasey's FOIA Officer conducted an unsuccessful supplementary due diligence search for the "Christensen nonacquiescence policy" by reviewing EOUSA computer indexes and not OLC indexes. The DOJ FOIA Officer did not contact AAG of the OLC (Acting) Steven Bradbury (2005-2008) to locate this "nonacquiescence" policy document. This is a key "nonacquiescence" document because it directly affects millions of 1994-2011 Ford v Shalala class members whose Notices do not cite to the "Jackson" regulation, 20 C.F.R. § 416.1130 (b). If there is no "Christensen nonacquiescence policy" document, then this is a *de facto* "Christensen nonacquiescence policy" that has resulted in the continued generation of the off-OMB Budget SSI funds not paid to millions of SSI recipients as intended by the Congress. See Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari at Statement of the Case § F.

63. AG Mukasey's FOIA Officer conducted an unsuccessful supplementary due diligence search for the "IMC Investigation Final Report" by contacting an attorney in the Office of the U.S. Attorney for the SD of Florida who searched that U.S. Attorney Office's indexes. The DOJ FOIA Officer did not contact AAG of the Civil Division DAAG of the Commercial Division Michael Hertz, a 33 year DOJ veteran, who knew where the IMC document was located. He had been in charge of the IMC *qui tam* suit in which DOJ succeeded the ex realtor Leon Weinstein

who was a former-HHS IG Special Agent who had participated in the HHS "Fraud Against the Government" investigation of IMC. After he retired, Mr. Weinstein had filed an IMC "whistleblower" *qui tam* action that was taken over by the Commercial Division. See Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari at Statement of the Case § G.

64. Plaintiff has made *de novo* July 27, 2010 and September 13, 2011 FOIA requests for these three documents. AAG of the OLC Virginia Seitz and AAG of the Civil Division DAAG of the Commercial Division Hertz know where these three documents are located. Hence, the application to file a January 13, 2011 Supplemental Declaration re the SG's Robert VIII Brief.

K. The July 9, 2008 decision of NARA ISOO Director Bosanko

65. On July 9, 2008, NARA ISOO Director William J. Bosanko informed the Robert II v CIA and DOJ plaintiff that the Public Interest Declassification Board (PIAB) did not have jurisdiction to consider his May 7, 2008 PIDB request for the declassification of documents. He advised that PIDB jurisdiction is limited to Congressional requests for declassification.

66. However, on July 16, 2008, he graciously informed the plaintiff that a U.S. citizen has a declassification remedy pursuant to § 3.5 (a)(3) of President Bush's March 25, 2003 E.O. 13292. A citizen can file a declassification request directly with the classifying agency for the declassification officer to render a declassification decision on behalf of the classifying agency.

L. The July 23, 2008 request for the Declassification of CIA classified documents

67. On July 23, 2008, the Robert II v CIA and DOJ plaintiff filed a declassification request with the CIA Declassification Center for the following documents:

1. Robert v National Archives "Bulky Evidence File" documents
2. Robert II v CIA and DOJ "North Notebook" documents
3. Robert VII v DOJ "FISC Robert" documents
4. Robert III v DOJ "Recarey extradition" documents
5. Robert v Holz sealed "Fraud Against the Government" documents

68. On September 30, 2008, the CIA Coordinator assigned Reference Number EOM-2008-01065. However, she subsequently "cancelled" that number. No new number was ever reassigned and no CIA declassification decision was ever rendered.

M. The September 14, 2008 excerpt publication of former-AAG of the OLC Goldsmith's Memoir <u>The Terror Presidency</u>

69. On September 14, 2008, the Washington Post printed an excerpt of former-AAG of the OLC Goldsmith's Memoir, <u>The Terror Presidency</u>, W.W.Norton & Company, 2007. Prior to his resignation, AAG of the OLC Goldsmith reported that he came to understand how the proponents of the "Unitary Executive" theory implemented their theory by tightly controlling the facts that were provided to other USG decision makers:

> They were geniuses at this," Goldsmith said. "They could divide up all these problems in the bureaucracy, <u>ask different people to decide things in their lanes</u>, <u>control the facts</u> that they gave them, and then <u>put the answers together to get the result they want</u>." Gellman, "Conflict Over Spying Led White House to Brink.", Washington Post, 9-14-08. Emphasis Added.

70**.** Plaintiff believed that in <u>Robert II v CIA and DOJ</u>, <u>Robert VII v DOJ</u>, and <u>Robert VIII v DOJ, HHS, and SSA</u> the 2001-2008 "Unitary Executive" theorist "genius" was VP Cheney's Counsel and Chief of Staff David Addington. Plaintiff believes that the 2011 "Unitary Executive" theorist "genius" is AG Holder's Associate DAG James Baker.

N. The September 22, 2008 Second Circuit <u>ACLU v DOD</u> decision

71. On September 28, 2008, the Second Circuit decided <u>ACLU. v DOD</u>, 543 F. 3d 59 (2d Cir. 2008), and rejected the USG's argument that Article III Courts should defer to the USG's Article II assessment of risk to the national security. "As FOIA applies government-wide and no one agency administers it, <u>no agency is entitled to deference in interpreting its provisions</u>." <u>Id</u>. 69. Emphasis Added. This decision was foreshadowed by IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush."

72. The Second Circuit highlighted the FOIA cases holding that the Congress intended that the FOIA was to be used by citizens to "know what their government is up to:"

> FOIA's purpose is to encourage public disclosure of information in the possession of federal agencies so that the people may "know what their government is up to." U.S. Dep't of Justice v Reporters Com. For Freedom of the Press, 489 U.S. 749, 772-773 (1988) (internal quotation and emphasis omitted). "Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." Id. at 773. The release of information of this sort vindicates FOIA's basic purpose "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978); see also Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 172 (2004)(describing FOIA as a "structural necessity in a real democracy"). Id. 66. Emphasis Added.

73. The Robert II v CIA and DOJ plaintiff seeks the classified "North Notebook" documents for the public to learn how the "Unitary Executive" theories of AG Meese were implemented at IMC. The FOIA requested classified "North Notebook" documents are connect-the-dots to the November 26, 2011 internet posted IC Walsh March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" document, because they reveal how Lt. Gen. North and IMC Chief of Staff del Real assisted the Contras who received medical treatment and supplies from IMC in violation of the Boland Amendment.

O. The October 3, 2008 proposed Attorney General Guidelines for Domestic FBI Operations that include FBI agents data mining the NSA TSP data banks

74. On October 3, 2008, Attorney General Mukasey and FBI Director Mueller publicly posted on the internet the Attorney General Guidelines for Domestic FBI Operations to be effective December 1, 2008. http://www.fbi.gov/pressrel/pressrel08/agg_statement100308.htm

75. They informed the public of the importance of the new FBI guidelines which will result in better integration of information among all of the intelligence agencies in order to

increase the effectiveness of FBI Director Mueller to protect U.S. citizens from terrorists. "The guidelines are consistent with recommendations of three major national advisory bodies and studies that the FBI become a more flexible and adept collector of intelligence."

76. However, FBI Director Mueller did not inform the public of the existence of the NSA domestic surveillance TSP data banks that the public would later learn about from investigative reporters Dana Priest and William Arkin in the July 17, 2010 Washington Post "Top Secret America" series. This is an important time line fact because FBI Director Mueller knew on October 3, 2008 that there had been data mining of the pre-9/11 NSA TSP data banks now in the custody of DOD Cyber Commander-NSA Director General Keith Alexander. FBI Director Mueller knew this intelligence activity had not been reported to the "Gang of Eight" as required by § 413 (a) of the National Security Act because FBI Director Mueller knew AG Gonzales' December 22, 2005 § 413 of the National Security Act Notification letter did not inform the "Gang of Eight" of the pre-9/11 NSA TSP data banks or the NSA Directors data mining.

P. The December 8, 2008 Second Circuit Doe, v Mukasey, et. al. decision

77. On December 15, 2008, the Second Circuit panel of Judges Newman, Calabresi, and Sotomayor decided Doe, et. al. v Mukasey, Mueller, and Caproni, 549 F. 3d 861 (2d Cir. 2008), and affirmed modifications the District Court injunction to prevent government officials from violating the First Amendment by use of prior restraints FBI "gag" Notices re FBI issuance of National Security Letters (NSLs). In dicta the Court discussed the Article III duty to review Article II national security decisions:

> There is not meaningful judicial review of the decision of the Executive Branch to prohibit speech if the position of the Executive Branch that speech would be harmful is "conclusive" on a reviewing court, absent only a demonstration of bad faith. To accept deference to that extraordinary degree would be to reduce strict scrutiny to no scrutiny, save only the rarest of situations where bad faith could be

> shown. Under either traditional strict scrutiny or a less exacting application of that standard, some demonstration from the Executive Branch of the need for secrecy is required in order to conform the nondisclosure requirement to First Amendment standards. The fiat of a government official, though senior in rank and doubtless honorable in the execution of official duties, cannot displace the judicial obligation to enforce constitutional requirements. "Under no circumstances should the Judiciary become the handmaiden of the Executive." United States v Smith, 899 F. 2d 564, 569, (6th Cir. 1990). Id. 870. Emphasis Added.

78. The Robert VIII v DOJ, HHS, and SSA appellant subsequently argued to the Second Circuit that in Robert VII v DOJ DOJ attorneys had made Judge Garaufis, the Second Circuit, and the Supreme Court the "handmaiden of the Executive" because DOJ attorneys had intentionally withheld material facts from the Judges based on AG Meese's "Barrett nonacquiescence policy," and then subsequently cited to the Judges' resulting decisions. "Finally, acceptance of the view urged by the federal appellants would result in a blanket grant of absolute immunity to government lawyers acting to prevent exposure of the government in liability." Barrett v. United States, 798 F. 2d 565, 573 (2d Cir. 1986). Emphasis Added. However, the Second Circuit rejected that argument in its September 6, 2011 decision.

Q. The January 21, 2009 President's Transparency and Open Government Memo

79. On January 21, 2009, President Obama issued a "Transparency and Open Government" Memorandum for the Heads of Executive Departments and Agencies:

> My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.
>
> *Government should be transparent*. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action,

> consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Emphasis Added.
>
> http://www.whitehouse.gov/the-press-office/transparency-and-open-government

80. Plaintiff believed that based on this "Transparency and Open Government" Memorandum, it would only be a matter of time for the new AG Eric Holder to review the prior DOJ polices and review DOJ litigation decisions in pending FOIA cases. He believed that at some point AG Holder would agree to the plaintiff's quiet settlement offers in Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA.

R. The January 21, 2009 President's FOIA Memo

81. On January 21, 2009, President Obama issued a "Freedom of Information Act" Memorandum for the Heads of Executive Departments and Agencies:

> The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.
>
> All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA
>
> The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely. Emphasis Added.

82. Plaintiff believed that based on this "FOIA" Memorandum, it would only be a matter of time for the new AG Eric Holder to review the prior DOJ polices and review DOJ

litigation decisions in pending FOIA cases. He believed that at some point AG Holder would agree to the plaintiff's quiet settlement offers in Robert II v CIA and DOJ and Robert VIII.

S. The January 21, 2009 President's "Presidential Records" Executive Order 13489

83. On January 21, 2009, President Obama issued a "Presidential Records" Executive Order 13489 and revoked President Bush's November 1, 2001 Executive Order 13233. This E.O. provided a process whereby the incumbent President, and not past Presidents or their Estates, would make the final executive privilege decision whether to withhold documents:

> Sec. 3. Claim of Executive Privilege by Incumbent President.
> (a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other executive agencies as they deem appropriate concerning whether invocation of executive privilege is justified.
>
> (b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of executive privilege is not justified. The Archivist shall be notified promptly of any such determination.
>
> (c) If either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General. Emphasis Added.
> http://www.whitehouse.gov/the-press-office/presidential-records

84. The plaintiff knew that this "Presidential Records" E.O. 13489 would result in President Obama at some time in his Administration making a decision on the FOIA request for the "February 25, 1987 Ross Perot documents and resulting final investigation Report of AG and FBI Director documents" being withheld by the President Ronald Reagan Library Archivist based on an executive privilege claim by a representative of the Estate of President Reagan. Upon information and belief, AG Holder affirmed the Estate's use of executive privilege.

85. Thus, on January 21, 2009, the plaintiff believed that based on an application of § 3 of the "Presidential Records" E.O. 13489, it would only be a matter of time for the new AG Eric Holder to review the prior FOIA polices and change policies in pending FOIA litigation. He believed that at some point AG Holder would agree to the plaintiff's quiet settlement offers in Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA.

T. The February 12, 2009 confirmation of CIA Director Leon Panetta

86. On February 12, 2009, the Senate confirmed President Obama's CIA Director Nominee Leon Panetta. Plaintiff believed that because CIA Director Panetta replaced 2006-2009 CIA Director General Hayden, the 1999-2005 NSA Director, that at some time CIA Director Panetta would review the classified documents that revealed that CIA Director Casey had conducted illegal domestic "black operations" at IMC and the NSA, and recommend that President Obama file a § 413 (b) of the National Security Act "corrective action" plan. This would cure the collateral damage that resulted in upsetting the separation of powers balance, and that caused the reduction of SSI benefits for millions of Ford class members.

87. CIA Director Panetta had been a 1969 Assistant to HHS Secretary Robert Finch, 1970 President Nixon's Director of Office for Civil Rights, 1979-1985 Member of House Budget Committee before becoming 1989-1993 Chairman, 1993-1994 OMB Director, July 17, 1994 to January 20, 1997 WH Chief of Staff for President Clinton, and 2006 Member of the Iraq Study Group. The plaintiff believed that because of his experience as the Article I Chairman the Budget Committee and as Article II OMB Budget Director, he would be able to "follow the money" and learn the off-OMB Budget funding source for the "immaculate construction" and maintenance of the 1984 NSA TSP data banks that were not funded with classified OMB Budget funds because of the illegal 1984-2009 data mining of the NSA TSP domestic data banks.

88. Plaintiff believed that it would only be a matter of time for CIA Director Panetta, an attorney, to review his FOIA docket seeking classified CIA documents. He believed that at some point CIA Director Panetta would agree to the plaintiff's quiet settlement offer in Robert II v CIA and DOJ in order to protect "sources and methods" of CIA black operations.

U. The March 19, 2009 FOIA Guidelines established by AG Holder

89. On March 19, 2009, AG Holder issued the FOIA Guidelines Memorandum for Heads of Executive Departments and Agencies. He established a presumption of disclosure that would apply in pending FOIA actions in which the AG Ashcroft's FOIA Guidelines had applied:

> Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. With regard to litigation pending on the date of the issuance of this memorandum, this guidance should be taken into account and applied if practicable when, in the Judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information. Id. at 2. Emphasis Added. http://www.justice.gov/ag/foia-memo-march2009.pdf

90. Plaintiff believed that based on these new FOIA Guidelines, it would only be a matter of time for AG Eric Holder to apply the presumption of disclosure standard in the pending FOIA cases. He believed that at some point AG Holder would agree to the plaintiff's quiet settlement offers in Robert II v CIA and DOJ and Robert VIII.

V. April 1, 2009 NYS Professional Responsibility Guidelines Rule Rule 3.3

91 On April 1, 2009, the NYS Professional Responsibility Guidelines became effective. This included the new duty of an attorney to comply with Rule 3.3(a)(3). This established a "shall" duty that attorneys were to correct prior misrepresentations made to Judges:

> If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of the falsity, the lawyer

> shall take responsible remedial measures, including if necessary disclosure to the tribunal. Emphasis added.
> NYS Unified Court System Part 1200 Rules of Professional Conduct
> http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf.

92. Plaintiff respectfully placed EDNY U.S. Attorney Loretta Lynch on Notice of her duty in Robert VIII v DOJ, HHS, and SSA to cure any misrepresentations of fact or law that occurred in Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). He respectfully placed EDNY U.S. Attorney Lynch on Notice that Rule 3.3 applied to the misrepresentations of fact and law that occurred when she was the 1999-2001 EDNY U.S. Attorney in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), and Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002).

93. Plaintiff believed that based on this new ethics NYS Rule 3.3, it would only be a matter of time for EDNY U.S. Attorney Lynch to apply the Rule 3.3. standard in the pending FOIA cases. He believed that at some point EDNY U.S. Attorney Lynch would recommend that AG Holder agree to the quiet settlement offers in Robert II v CIA and DOJ and Robert VIII.

W. May 18, 2009, Supreme Court Ashcroft v Iqbal decision

94. On May 18, 2009, the Supreme Court decided Ashcroft v Iqbal, 129 S.Ct. 1937 (2009), and established a high pleading bar that a Bivens plaintiff's complaint must contain "plausible" allegation includes the names of the government tortfeasors:

> The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer probability that a defendant has acted unlawfully. When a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of *entitlement to relief*' Iqbal at 1949. Emphasis Added.

95. Ironically, plaintiff believed that Iqbal would increase the probability that AG Holder would accept the ongoing Robert II v CIA and DOJ, and Robert VIII v DOJ, HHS, and SSA

quiet settlement offers. AG Holder would understand that plaintiff would need the FOIA requested documents to survive an AG's Iqbal Motion to dismiss the plaintiff's putative Bivens action that his First Amendment right of access had been violated by DOJ attorneys. He needed the documents to identify the names of "command and control" officers of the DOJ attorneys.

X. The June 25, 2009 confirmation of CIA General Counsel Stephen Preston

96**.** On June 25, 2009, the Senate confirmed President Obama's CIA Director Nominee Stephen Preston to succeed Acting CIA General Counsel John Rizzo. This was an important Robert II v CIA and DOJ litigation milestone because Acting CIA General Counsel Rizzo had been a career CIA employee beginning in 1976. CIA General Counsel Preston would bring fresh eyes when considering plaintiff's quiet settlement offer.

97**.** CIA General Counsel Preston had been the 1993-1995 DOD Principal Deputy General Counsel. He knew that DIA Director Lt. General Clapper had data mined the 1984-1995 NSA TSP data banks. Therefore, he knew that the pre-9/11 NSA TSP had been conducted in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and the PCA limitation on military domestic law enforcement.

98. CIA General Counsel Preston had been the 1995-1998 Civil Division DAAG responsible for appellate litigation. Therefore, he knew that Solicitor General Days and AG Reno defended the 1982-2009 "Jackson nonacquiescence policy" of HHS General Counsel del Real**.** He had read n**.** 4 of the SG's Brief in opposition to the Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996), petition for a writ of certiorari:

> Petitioner's discussion of the Acquiescence Ruling manifests a misunderstanding of such rulings. In issuing those rulings, the Commissioner has chosen to acquiesce in adverse court of appeals decisions within the respective circuits, instead of seeking review of those decisions in this Court. That practice, however, in no way obligates the Commissioner to change her administration of the Act in cases involving

> other litigants in other circuits that have not rejected her legal position on a particular issue. See e.g., United States v Mendoza, 464 U.S. 154 (1984). http://www.usdoj.gov/osg/briefs/1995/w95955w.txt.

99. CIA General Counsel Preston knew that SG Days' February, 1996 Gordon Brief was "smoking gun" evidence that SSA Commissioner Nominee Astrue's sworn January 24, 2007 Senate Finance Committee testimony that the "nonacquiescence" policy had ended prior to his becoming the HHS General Counsel in 1989, remained as uncured false testimony in June, 2009. "I am particularly proud of having led the effort to terminate the agency's longstanding "nonacquiescence" policies, an achievement highlighted by Chairman Moynihan when I was last before you in 1989 during my confirmation hearing for General Counsel of HHS." S.Hrg. 110-222. Emphasis Added. http://finance.senate.gov/hearings/testimony/2007test/012407matest.pdf.

Y. The July 10, 2009 Intelligence Community's IGs Unclassified and Classified Report on the President's Surveillance Program

100. On July 10, 2009, the Intelligence Community's IGs DOJ Glenn Fine, DOD (Acting) Gordon Hedell, CIA (Acting) Patricia Lewis, NSA George Ellard, and DNI Roslyn Mazer released to the public their Unclassified Report on the President's Surveillance Program and submitted their Classified Report on the President's Surveillance Program to the Intelligence Committees. These Reports were explicitly limited to the post-9/11 NSA TSP, denominated as the President's Surveillance Program (PSP). They did not discuss the pre-9/11 NSA Terrorist Surveillance Program (TSP) that Congress had never been informed existed with the filing of a § 413 (a) of the National Security Act Notification with the "Gang of Eight."

101. The Unclassified Report discussed the ODNI participation in the PSP:

> **6. ODNI Participation in the PSP**
>
> PSP-derived information was closely held within the ODNI and was made available to a limited number of NCTC analysts for review or, if appropriate, use in preparing NCTC analytical products. Generally, the

> NCTC analysts approved for PSP access received PSP-derived information in the form of NSA intelligence products. NCTC analysts told the ODNI OIG that they generally obtained access to the PSP-derived information from a secure IC database or directly from an NSA representative. NCTC analysts told the ODNI OIG that the PSP-derived information was subject to stringent security protections. The NCTC analysts said they received training regarding the proper handling of IC signals intelligence, and they reported that they handled all such information, including PSP-derived information, consistent with standard rules and procedure. Id. 18. Emphasis Added.
> http://www.usdoj.gov/oig/special/s0907.pdf

102. Upon information and belief, all five of the Intelligence Community IGs knew that a pre-9/11 NSA TSP existed. However, they were bound by Nondisclosure Agreements that they could not reveal the existence of the Top Secret classified pre-NSA TSP and the 1984-2009 mining of the "do not exist" pre-9/11 NSA TSP data banks. All of the IGs knew that the post-9/11 NSA PSP data banks were not miraculously constructed after 9/11 with classified OMB funds. They knew that the post-9/11 NSA PSP data banks were yearly additions to the pre-9/11 NSA TSP data banks that had been constructed and maintained with off-OMB Budget funds. They knew the NSA Directors knew the source of the unaudited off-OMB Budget funds.

103. Plaintiff believed that with the publication of the Unclassified Report on the President's Surveillance Program, that AG Holder would agree to the quiet settlement offers in Robert VIII v DOJ, HHS, and SSA and Robert II v CIA and DOJ, in order to minimize the risk that the public would learn of the off-OMB Budget source for CIA Director Casey's "black operations" at NSA and IMC. This would occur if AG Holder was asked a "follow the money" question as to the funding source for the post-9/11 NSA PSP data banks from 2002-2005.

104. Plaintiff believed that AG Holder would realize that he was stuck with AG Gonzales' December 22, 2005 § 413 (a) National Security Act Notification for the post-9/11 NSA PSP with a retroactive Notification for the 2002-2005 "immaculate construction" of the

NSA PSP data banks that were not funded with classified OMB Budget funds. Plaintiff believed that CIA General Counsel Preston would inform AG Holder of the off-OMB Budget source for the NSA TSP data banks that he knew existed when he was the 1993-1995 DOD Principal Deputy General Counsel, and then when he was 1995-1998 Civil Division DAAG responsible for appellate litigation that included reviewing the Gordon v Shalala Briefs.

Z. The July 27, 2009 OP Ed Article of former NSA and CIA Director General Hayden

105. On July 27, 2009, CIA Director Hayden (2006-2009), the 1999-2005 NSA Director, wrote an Op Ed Contributor article for the NY Times, Warrantless Criticism. This was in response to the internet posted July 10, 2009 IG's unclassified NSA PSP Report.

106. Former-CIA Director Hayden highlighted the fact that at all times he relied upon USG attorneys' legal opinions that the NSA TSP was in compliance with the FISA:

> There is also one very large finding in the report that hasn't received the attention it deserves: "No evidence of intentional misuse" of the program was discovered. …
>
> There has been much controversy about the lawfulness of the program. Here I must point out that agency lawyers — career attorneys with deep expertise in the law, privacy and intelligence — assisted their professional Justice Department counterparts in their review of the program but remained comfortable throughout with the lawfulness of all aspects of the surveillance effort…
>
> In any event, the aspect of the program that was so contentious in March 2004, when some Justice Department officials objected, resumed in only slightly modified form within six months under a new legal regime that all the players in March's crisis supported. And it should be pointed out that the elements of the program made public in news reports in December 2005 had been consistently deemed lawful by the Justice Department. ..
>
> This debate on law and policy will no doubt continue, but learning will only begin when we turn down the volume, moderate our language and recognize that there is more information that will appropriately become available in time to allow both us and history to inform our judgments. Emphasis added.

http://www.nytimes.com/2009/07/27/opinion/27hayden.html?_r=1&ref=todayspaper&pagewanted=print.

107. Former-CIA Director Hayden telescoped the fact that there were public "unknown-unknown" facts that would "appropriately become" public "known-known" facts. For plaintiff, this was another signal that CIA Director Panetta would accept the quiet settlement offer.

AA. The August 5, 2009 Second Circuit Doe v CIA decision

108. On August 5, 2009, the Second Circuit decided Doe v CIA, 576 F 3d 95 (2d Cir. 2009), and discussed the USG's use of the state secrets defense. Although the USG has never used the state secrets defense in any of the Robert FOIA actions, the Second Circuit noted that a hypothetical Bivens tort could be established if government officials took "systemic official actions" to prevent a U.S. citizen's access to the Article III courts:

> Hypothetically, were the plaintiffs to plead and prove that their inability to confer with counsel was part of an effort on the part of the CIA to frustrate their ability to bring or pursue an action, they might be able to establish a claim under Bivens v Six Unknown Federal Narcotic Agents, 403 U.S. 388 (1971), or otherwise, see Christopher, 536 U.S. at 413 (recognizing a category of viable law suits in which "access to courts claims are brought to the effect that "systemic official action frustrates a plaintiff or plaintiff class in preparing and filing suits"). That issue is not before us, however. The plaintiffs have alleged no facts that would support such a law suit here, nor have they sought such relief." Id. n. 9. Emphasis Added.

109. In Robert VIII v DOJ, HHS, and SSA, the plaintiff had placed AG Holder on Notice that one of the reasons that he was seeking the Robert VIII FOIA requested documents was because they were needed to survive an Iqbal Motion to dismiss his putative claim that his First Amendment right of access to the courts were violated by USG attorneys. If he survived an Iqbal Motion to Dismiss, then he needed the documents to carry his evidentiary burden to prove the elements of this Bivens tort as explained in Christopher v. Harbury, 122 S, Ct 2171 (2001),

110. Plaintiff believed that by AG Holder's application of a Doe v CIA "systemic official actions" standard in a review of the Robert VIII "Robert v Holz" and Robert VII "FISC Robert" connect-the-dots documents, that AG Holder would know that Robert could survive an

Iqbal Motion to dismiss by citing a future Article III trial Judge to the "Robert v Holz" and "FISC Robert" connect-the-dots in the AG's custody that reveal that DOJ attorneys knew that Robert had been the illegal target of the illegal NSA TSP. Hence, his belief that AG Holder would agree to plaintiff's Robert VIII and Robert II v CIA and DOJ quiet settlement offers.

BB. The November 2, 2009 Second Circuit Arar v Ashcroft decision

111 On November 2, 2009, the Second Circuit Circuit *en banc* decided Arar v Ashcroft, 585 F.3d 559 (2d Cir. 2009), and dismissed a Bivens extreme rendition complaint because Congress did not provide a statutory framework upon which a Bivens claim could be applied to the extreme rendition of a person who was not a U.S. citizen. However, the Court discussed the application of the Ashcroft v Iqbal "plausibility" pleading standard for a "Bivens" complaint to survive a Motion to Dismiss in the Second Circuit:

> Broad allegations of a conspiracy are insufficient; the plaintiff "must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." Webb v Goord, 340 F. 3d 105, 110 (2d Cir. 2003) (internal quotation marks omitted) (addressing conspiracy claims under 42 U.S.C. 1985). Furthermore a plaintiff in a Bivens action is required to allege facts indicating that the defendants were personally involved in the claimed constitutional violation. See Ellis v Blum, 643 F. 2d 68, 85 (2d Cir. 1981); see also Thomas v Ashcroft, 470 F. 3d 491, 496 (2d Cir. 2006). Id. 6. Emphasis Added.

112 Ironically, like the Iqbal decision, plaintiff believed that Arar would increase the probability that AG Holder would accept the ongoing Robert II v CIA and DOJ, and Robert VIII v DOJ, HHS, and SSA quiet settlement offers. AG Holder would understand that plaintiff would pursue the FOIA requested documents to survive an AG's Iqbal-Arar Motion to dismiss the plaintiff's putative Bivens action that his First Amendment right of access had been violated by DOJ attorneys. AG Holder would know upon reading the Robert VII "FISC Robert" documents

withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense, and the Robert VIII "Robert v Holz" documents withhold pursuant to FOIA Exemption 5, that these connect-the-dots documents reveal the names of DOJ attorneys who were personally involved in 1985-2011 USG "systemic official actions" to violate Robert's First Amendment right of access to the Courts as an attorney representing clients challenging the "nonacquiescence" policies of HHS General Counsel del Real and AG Meese.

CC. The November 12, 2009 Second Circuit Wilson v CIA decision

113. On November 12, 2009, the Second Circuit decided Wilson v CIA, 586 F. 3d 171 (2d Cir. 2009), (2d Cir. 2010), and dismissed the action filed by a former-CIA agent. The Court relied upon the facts of a "continued classification" unclassified Declaration filed by CIA Deputy Director Stephen Kappes as to the need to protect "sources and methods" for future use:

> In addition, CIA intelligence-gathering methods are useful only so long as they remain unknown and unsuspected. Once a method is discovered, "its continued successful use will be in serious jeopardy." Id ¶ 48. Therefore, "(a)cknowledging cover mechanisms used by the CIA would expose and officially confirm those mechanisms, hindering the effectiveness of the cover for current and future covert employees, as well as current and future intelligence operations." Id. ¶ 58. n. 5, p. 53. Emphasis Added.

114. Ironically, like Iqbal and Arar, plaintiff believed that Wilson increased the probability that AG Holder would accept the ongoing Robert II v CIA and DOJ, and Robert VIII v DOJ, HHS, and SSA quiet settlement offers. AG Holder and CIA Director Panetta would know that if the plaintiff filed a Bivens action, he would cite to the Robert VII "FISC Robert" documents withheld pursuant to the CIA's use of FOIA Exemption 1 and "Glomar Response" defense. This would trigger the need for the CIA Director to file a Classified Information Procedure Act (CIPA) "continued classification" Declaration to explain to an Article III Judge why the CIA determined that it was necessary to protect its "sources and methods" revealed in

the Robert VII "FISC Robert" documents. Plaintiff asserts that these documents reveal that he was the illegal target of an illegal NSA TSP that was conducted in serial violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on military domestic law enforcement, and the Social Security Act.

115. Plaintiff also believed that AG Holder and CIA Director Panetta would know whether Robert VIII "Robert v Holz" documents revealed whether HHS General Counsel del Real was CIA Director Casey's covered agent when he initiated the "Fraud Against the Government" investigation of Robert seeking his incarceration and disbarment to eliminate his challenges to the "Jackson nonacquiescence policy" that generated monies to pay for "black operations" of the CIA. If so, then they would know this would be the mother of all "clandestine" policies to trigger the Bowen v City of New York, 106 S. Ct. 2022 (1986), equitable tolling remedy for SSI recipients who were not Ford class members. "The claimants were denied the fair and neutral procedure required by the statute and regulations, and they are now entitled to pursue that procedure." Id. 2034.

DD. The December 29, 2009 E.O. 13526 Classified National Security Information

116. On December 29, 2009, President Obama issued E.O. 13526 Classified National Security Information. This established the standards that would be applied to classified documents in the FOIA litigation. http://edocket.access.gpo.gov/2010/pdf/E9-31418.pdf

117. E.O. 13526 §1.7, Classification Prohibitions and Limitations, established the standard to prohibit classification of documents for improper uses:

> a) In no case shall information be classified , continue to be maintained as classified, or fail to be classified in order to:
>
> (1) conceal violations of law, inefficiency, or administrative error;
> (2) prevent embarrassment to a person, organization, or agency;
> (3) restrain competition;

> (4) prevent or delay the release of information that does not require protection in the interest of the national security. Emphasis Added.

118. E.O. 13526 § 3.3 Automatic Declassification (ADR), established an Article II standard for documents that are automatically declassified after 25 years:

> (a) …all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. All classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(j) of this section.

119. E.O. 13526 § 3.5 Mandatory Declassification Review (MDR), established a standard for declassification of documents that are less than 25 years old:

> (a) …all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:
>
> (1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
> (2) the document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and
> (3) the information is not the subject of pending litigation.

120. President Obama also retained the use of the "Glomar Response" defense. An agency can neither admit nor deny a classified document exists if a determination was made in a prior President's executive order that the national security would be at risk if the public even knew that the requested document exits:

> § 3.6 Processing Requests and Review
>
> An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors. Emphasis Added.

121. Plaintiff believed that by application of the new E.O. 13526, that AG Holder and CIA Director Panetta would accept plaintiff's quiet settlement offers in Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA because the FOIA requested documents would be subject to the application of the § 1.7 Classification Prohibitions and Limitations, standards. Plaintiff believed that AG Holder's Associate DAG James Baker would recommend a quiet settlement.

122. Plaintiff believed that CIA Director Panetta and AG Holder would follow the recommendation of AG Holder's Associate DAG Baker that there be a quiet settlement, because he knew the content of the Robert VII "FISC Robert" documents that he had read on March 1, 2004 when he affirmed the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. As a result, he knew nine days prior to the March 10, 2004 confrontation between WH Counsel Gonzales and AG Ashcroft, DAG Comey, and FBI Director Mueller in AG Ashcroft's hospital room, of the existence and data mining of the pre-9/11 NSA TSP data banks. He knew why CIA officials made Robert the target of the CIA's domestic NSA TSP. He knew that the 1980s NSA TSP had been conducted in serial and impeachable violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on military domestic law enforcement, and Social Security Act.

123. AG Holder's Associate DAG Baker also knew why on December 22, 2005 AG Gonzales' § 413 (a) of the National Security Act Notification to the "Gang of the Eight" was a retroactive notification of the post-9/11 2001-2005 NSA TSP, but not of the pre-9/11 1984-2001 NSA TSP. http://www.fas.org/irp/agency/doj/fisa/doj122205.pdf. He also knew who made the Robert VII v DOJ litigation decision that in AG Gonzales' April 3, 2006 Second Circuit Robert VII v DOJ letter-Brief, AG Gonzales should not inform the Second Circuit of the facts contained in the Robert VII v DOJ "FISC Robert" documents withheld pursuant to FOIA

Exemption 1 and the "Glomar Response" defense, that Robert had been an "aggrieved person" by application of 18 U.S.C. § 1806 (f). http://www.snowflake5391.net/RobertvDOJbrief.pdf.

124. In December, 2006, CIA Director Hayden awarded him the George H.W. Bush Award for Excellence in Counterterrorism, the highest CIA award. On January 19, 2007, AG Gonzales awarded him the Edmund J. Randolph Award, the highest DOJ award. He had the gravitas and institutional memory to render a classified §1.7, Classification Prohibitions and Limitations, fact finding decision for President Obama as to the "cover up" of federal crimes.

125. Thus, after President Obama issued E.O. 13526 Classified National Security Information on December 29, 2009, plaintiff confidently believed that it was just a matter of time before CIA Director Panetta and AG Holder would agree to plaintiff's tandem quiet settlement offers in Robert VIII v DOJ, HHS, and SSA and Robert II v CIA and DOJ. This was without plaintiff knowing of the existence of the IC Walsh March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" that explained AG Meese's legal opinions re Article I laws that he believed "unconstitutionally" encroached upon the President's Article II authority to protect the national security.

EE. The December 30, 2009 Wilner v NSA Second Circuit decision

126. On December 30, 2009, the Second Circuit decided Wilner v National Security Agency, 592 F.3d 60 (2d 2009), and upheld the USG's use of the "Glomar Response" defense in refusing to order the release of requested documents. The Court discussed the Wilner appellant's allegation of a "bad faith" invocation of the Glomar Doctrine and established a standard of *in camera* review of "Glomar Response" withheld documents:

> Having concluded that the affidavits were more than sufficient to support the NSA's claim that FOIA Exemption 3 encompasses confirmation or denial of the existence of the requested records, we now consider plaintiff's claims that the NSA invoked the Glomar doctrine for the

> purpose of concealing illegal or unconstitutional actions. We cannot base our judgment on the mere speculation that the NSA was attempting to conceal the purported illegality of the TSP by providing Glomar response to plaintiffs' requests. A finding of bad faith must be grounded in 'evidence suggesting bad faith on the part of the (agency).' Larson, 565 F.3d at 864. 'Ultimately, an agency's justification for invoking a FOIA Exemption is sufficient if it appears logical or plausible.' Id. at 862 (internal quotation marks omitted). After reviewing the record before us, we agree with the District Court that the agency's affidavits and justification are both logical and plausible. We do not find any evidence that even arguably suggests bad faith on the part of the NSA, or that the NSA provided a Glomar response to plaintiff's requests for the purpose of concealing illegal or unconstitutional actions. Id. at 75. Emphasis Added.

127. The plaintiff placed AG Holder and EDNY U.S. Attorney Lynch on Notice in Robert VIII v DOJ, HHS, and SSA that one of the reasons he was seeking the release of the Robert VIII "Robert v Holz" documents was to prove the "bad faith" of USG attorneys in using the "Glomar Response" in Robert VII v DOJ to withhold the "FISC Robert" documents. He asserted that the DOJ attorney who read the "Robert v Holz" documents in order to made the FOIA Exemption 5 decision, knew that those documents revealed the "bad faith" use of the "Glomar Response" defense to withhold the Robert VII v DOJ "FISC Robert" documents.

128. Plaintiff believed that by AG Holder applying the Wilner "bad faith" standard to the use of the "Glomar Response" to withhold the Robert VIII v DOJ "FISC Robert" documents, this would lead to the long sought after quiet settlement of Robert II v CIA and DOJ and Robert VIII v DOJ, HHS, and SSA. Plaintiff's "bad faith" assertion was made without his knowledge of the IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" that reveal violations of law based on AG Meese's opinions.

FF. The June 9, 2010 Second Circuit In re City of New York decision

129 On June 9, 2010, the Second Circuit decided In re City of New York, 607 F.3d 923 (2d Cir. 2010), and held that in a § 1983 action in which the plaintiff claims a First Amendment

right violation, the Article III Judge is to review *in camera* the documents withheld pursuant to privilege defenses. "To assess both the applicability of the privilege and the need for the documents, the district court must ordinarily review the documents in question."

130. Plaintiff believed that this decision would lead to the Robert VIII v DOJ, HHS, and SSA and Robert II v CIA and DOJ quiet settlement because of the Second Circuit standard that there should be an *in camera* review of the privileged documents. In Robert VIII the plaintiff was alleging that the "Robert v Holz" documents withheld pursuant to FOIA Exemption 5, were connect-the-dots documents to the Robert VII v DOJ "FISC Robert" documents.

131. Plaintiff believed that if the City of New York *in camera* review standard would be applied by the Second Circuit in Robert VIII, then AG Holder would know that the DOJ "Robert v Holz" documents and DOJ "FISC Robert" documents that Judge Garaufis never had read *in camera*, might be read by the Second Circuit *in camera*. If so, then AG Holder would know that this would lead to the Second Circuit learning whether in Robert VII v DOJ, AG Gonzales had made the Second Circuit the "handmaiden of the Executive." "Under no circumstances should the Judiciary become the handmaiden of the Executive." Doe, et. al. v Mukasey, Mueller, and Caproni, 549 F. 3d 861, 870 (2d Cir. 2008).

GG. The July 19, 2010 Washington Post "Top Secret America" Locator Map

132. On July 19, 2010, the Washington Post began the "Top Secret America" series of investigative reporters Dana Priest and William Arkin that explained the NSA domestic surveillance program. It included an eye opening and jaw dropping Orwellian Location Map that revealed thousands of USG and private work locations hidden from the public in plain sight and manned by tens of thousands of analysts. Plaintiff believed that the publication of the Location Map would result in AG Holder and CIA Director Panetta accepting the plaintiff's ongoing

quiet settlement offers to protect CIA's 1984-2010 continued classification of its "sources and methods" at the NSA. http://projects.washingtonpost.com/top-secret-america/map/.

133. The "Top Secret America" Location Map was visual corroboration of the December 16, 2005 James Risen and Eric Lichtblau "Bush Lets U.S. Spy on Callers Without Court" NY Times scoop. That publication was two days after the Robert VIII v DOJ, HHS, and SSA Judgment was filed that enjoined Robert from filing a FOIA request without a pre-clearance Order signed by Judge Garaufis. See the Robert VIII petition for a writ of certiorari Reasons II.

134. The "Top Secret America" series was corroboration of the May 18, 2006 Siobhan Gorman "leaked" story that NSA Director General Hayden had data mined the NSA TSP without the knowledge of the "Gang of Eight" or the FISC. "NSA Killed System That Sifted Phone Data Legally," Baltimore Sun, http://www.commondreams.org/headlines06/0518-07.htm. March 18, 2006 was the day that CIA Director Nominee Hayden's confirmation hearing was held.

135. Plaintiff believed that CIA Director Panetta's knowledge of the public's growing awareness of the Hooveresque as well as Orwellian nature of the NSA domestic surveillance program, was reason enough for an acceptance of the ongoing quiet settlement offer. Plaintiff's belief was also based on the Robert II v CIA and DOJ September 3, 1985 classified North Notebook document that revealed CIA and FBI use of FOIA Exemption 1 and 7. This indicated that FBI Executive Assistant Director for Intelligence "Buck" Revell knew of CIA Director Casey's domestic "black operations." See the 9/3/85 North-FBI Exemptions 1, 7 and Buck Revell "North Notebook" log. http://www.snowflake5391.net/9-3-85North-FBI.pdf.

136. Plaintiff believed that CIA Director Panetta would realize that because of the Washington Post July 27, 2010 "Top Secret America" series, the "cat was out of the bag" and it was only a matter of time for Congressional Oversight Committees and investigative reporters

to "walk back the cat." They could track the Orwellian-Hooveresque NSA domestic surveillance program with its eye-opening Locator Map posted on the internet, backwards to CIA Director Casey's domestic "black operation" at NSA that was not funded with classified OMB funds. The Congressional Oversight Committees and investigative reporters could track backwards to CIA Director Casey's "black operation" at the NSA through the May 18, 2006 Baltimore Sun NSA "leak" and CIA Director Nominee General Hayden's May 18, 2006 CIA confirmation hearing testimony. Former-CIA Director Hayden had foreshadowed this inevitable historical "walk back the cat" process in his July 27, 2009 NY Times Op Ed in response to the July 10, 2010 Inspector Generals Unclassified Report on the President's Surveillance Program that had been explicitly limited to the 2001-2010 Top Secret post-NSA TSP. See § Z above.

137. Thus, plaintiff's optimism that there would be a quiet settlement was fueled by the July 19, 2010 Washington Post "Top Secret America" series. CIA Director Panetta, the 1993-1994 OMB Director and 1994-1997 WH Chief of Staff, would recommend that President Obama file a § 413 (b) of the National Security Act "corrective action" plan to cure the illegal intelligence activity that Congressional Oversight Committees would learn began in 1984 when CIA Director Casey established the illegal domestic CIA "black operation" at NSA that evolved into the DOD TALON Program that DOD Secretary Gates terminated on September 17, 2007.

HH. The July 27, 2010 DOJ, FBI, CIA, ODNI, NSA, NARA, OMB, HHS, and SSA. FOIA requests based on the July 19, 2010 "Top Secret America" series

138. Because of the July 19, 2010 "Top Secret America" series explaining the NSA domestic surveillance program, plaintiff filed a coordinated series of July 27, 2010 FOIA requests with DOJ, FBI, CIA, ODNI, NSA, NARA, OMB, HHS, and SSA. The Robert VIII v DOJ, HHS, and SSA and Robert II v CIA and DOJ plaintiff informed AG Holder that these FOIA requests were based on the Washington Post "Top Secret America" series that sought a

mosaic of documents that would prove serial and impeachable violations of federal laws. Plaintiff included with each July 27, 2010 FOIA request a 316 page Robert VIII v DOJ, HHS, and SSA White Paper in support of the renewed Robert VIII quiet settlement offer.

139. As per the Statement of the Case facts presented in the Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari, plaintiff took the position that Judge Garaufis' December 9, 2005 decision enjoined Robert from filing a FOIA complaint without a pre-clearance order from Judge Garaufis, and not from filing a FOIA request. Plaintiff believed that the Robert VIII v DOJ, HHS, and SSA December 14, 2005 Clerk's Judgment was a mistake.

140. With the knowledge that plaintiff had filed the July 27, 2010 DOJ, FBI, CIA, ODNI, NSA, NARA, OMB, HHS, and SSA FOIA requests, AG Holder took no action to enforce the Clerk's Judgment enjoining Robert from filing FOIA requests without a pre-clearance Order. Upon information and belief, AG Holder's Associate DAG James Baker determined that the December 14, 2005 Clerk's Judgment, issued two days prior to the December 16, 2005 Risen and Lichtblau "Bush Lets U.S. Spy on Callers Without Court" NY Times scoop, was a Clerk's mistake, and that the Robert injunction only applied to filing a FOIA complaint.

141. Plaintiff's July 27, 2010 CIA FOIA request sought the following documents:

1. 9/3/85 North-FBI Revell "North Notebook" log entry.
   http://www.snowflake5391.net/9-3-85North-FBI.pdf.
2. 9/6/85 North-CIA-FBI Exemptions 1, 3 and NHAO
   http://www.snowflake5391.net/9-6-85NorthCIA.pdf.
3. 9/16/85 North-Call to Perot Exemptions 1 and 3
   http://snowflake5391.net/perot.pdf.
4. 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos
   http://www.snowflake5391.net/medivachelos.pdf.
5. All Robert II v CIA "c (3) exclusion" *ex parte* Declarations

142. The plaintiff made the # 5 FOIA request in order that those documents would be identified and subject to Article III review by this Court and not by Judge Garaufis pursuant to

his December 9, 2005 Robert VIII injunction Order. Plaintiff knew that CIA General Counsel Preston would have to decide whether the Robert VIII December 14, 2005 Clerk's Judgment applied to this July 27, 2010 CIA FOIA request. Plaintiff believed that because of the Washington Post "Top Secret America" series with its eye-opening Locator Map, CIA General Counsel Preston, the 1993-1995 DOD Principal Deputy General Counsel, would prudently recommend that CIA Director Panetta enter into a quiet settlement of Robert II v CIA and DOJ.

143. However, CIA Director Panetta's CIA FOIA Officer did not docket or process this CIA FOIA request. Upon information and belief, CIA General Counsel Preston consulted with 2003-2011 FBI General Counsel Valerie Caproni re this CIA FOIA request. Upon information and belief, CIA General Counsel Preston did not consult with CIA Director Panetta. Upon information and belief, CIA General Counsel Preston instructed the CIA FOIA Officer not to docket or process the CIA FOIA request because the Robert VIII v DOJ, HHS, and SSA Clerk's Judgment required Judge Garaufis' pre-clearance Order prior to Robert filing any FOIA request.

II. The August 5, 2010 confirmation of ODNI Director Clapper

144. On August 5, 2010, the Senate confirmed President Obama's ODNI Director Nominee Clapper. Plaintiff believed that this would lead to the quiet settlement because as DOD Under Secretary of Defense for Intelligence, he terminated the CIFA TALON project.

145. ODNI Clapper knew that as 1992-1995 DIA Lt. General Clapper, he had data mined 1984-1995 NSA TSP data banks based on the FISA legal opinion of AG Meese. As 1992-1995 DIA Director, he had relied upon the legal advice of 1993-1995 DOD Principal Deputy General Counsel Stephen Preston, who he knew became AG Reno's 1995-1998 DAAG responsible for civil litigation. As ODNI Director he would rely upon the legal advice of ODNI General Counsel Robert Litt who had been AG Reno's 1997-1999 Principal Associate DAG.

146. Thus, plaintiff believed that the August 5, 2010 confirmation of ODNI Director Clapper would increase the probability of a Robert II v CIA and DOJ quiet settlement because CIA Director Pantta's CIA General Counsel Preston knew that ODNI Director Clapper, as the 1992-1995 DIA Director, had data mined the 1992-1995 NSA TSP data banks in violation of the § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on military domestic law enforcement, and Social Security Act. Because of the July 27, 2010 Washington Post "Top Secret America" series, the plaintiff believed that ODNI Director Clapper would seek the advice not only of ODNI General Counsel Litt, but also CIA Director Panetta because he was the 1993-1994 OMB Director when ODNI Director Clapper was the DIA Director. They knew the NSA TSP data banks were not funded with classified OMB Budget funds and not reported to the "Gang of Eight" in AG Gonzales' December 22, 2005 letter that did not discuss the pre-9/11 NSA domestic surveillance program.

JJ. March 14, 2011 AG Holder's Proposed FOIA amendment re the "Glomar Response"

147. On March 14, 2011, AG Holder filed a Federal Register Notice of Proposed Rule Making to amend the FOIA regulations. The proposed § 16.6 (f) establishes the use of the "Glomar Response" defense by the denying the FOIA request as if the documents do not exist, even though the documents do exist. If this is adopted as final Rule, then along with the use of Article II "secret law" that Article III Judges do not know exists, the FOIA statute has been eviscerated by a decision that is unreviewable by an Article III Judge because a FOIA requester would never know when a "Glomar Response" decision was made for a FOIA requested document. An USG attorney would know that the document existed, but would advise the FOIA Officer to lie to the FOIA requester and deny the FOIA request with a reason the USG attorney knew was false. http://www.gpo.gov/fdsys/pkg/FR-2011-03-21/html/2011-6473.htm

148. The proposed 28 C.F.R. Part § 16.6 (f), Use of record exclusions, provides:

> (1) In the event a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552 (c), the head of the FOIA Office of that component must confer with the Office of Information and Policy (OIP) to obtain approval to apply the exclusion.
>
> (2) When a component applies an exclusion to exclude records from the requirements of the FOIA pursuant to 5 U.S.C. 552 (c), the component utilizing the exclusion will respond to the request as if the excluded records did not exist. This response should not differ in wording from any other response given by the component.
> (3) Any component invoking an exclusion shall maintain an administrative record of the process of information and approval of the exclusion by OIP.

149. The fact that AG Holder proposed this "Glomar Response" FOIA amendment raises the issue of whether AG Holder has any internal Article II checks and balances to prevent USG employees from misusing the "Glomar Response" defense to cover up violations of federal laws. If not, then this would mean that not only is the FOIA statute eviscerated, but so too is President Obama's E.O.13526 §1.7, Classification Prohibitions and Limitations,

150. The fact that AG Holder proposed this "Glomar Response" FOIA amendment, whereby DOJ attorneys instruct FOIA Officers to lie to FOIA requesters, raises the possibility that a DOJ "stovepipe" bypasses AG Holder so that he does not know what policy decisions are being made on his behalf. If so, then AG Holder does not know of the proposed Part § 16.6 (f), to amend the FOIA regulations whereby DOJ attorneys instruct FOIA Officers to lie to U.S. citizens who file FOIA requests for document re the CIA-FBI-NSA TSP. Members of Congress are now asking oversight questions re AG Holder's management style and whether DOJ attorneys are making strategic decisions without AG Holder's knowledge. See § UU below.

KK. The March 18, 2011 decision of AG Holder to reclassify pages of the May 6, 2004

151. On March 18, 2011, AG Holder declassified and reclassified the Top Secret May 6, 2004 OLC FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft.

Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program. This declassification decision was made five years after a FOIA request was made for the document and a FOIA action. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF.

152. AG Holder declassified the May 6, 2004 OLC FISA Memorandum for AG Ashcroft that explained that the main legal authority of the post-9/11 NSA PSP was the Congressionally enacted September 18, 2001 Authorization for Use of Military Force (AUMF), which trumped the "exclusivity provision" of the FISA. However, AG Holder (or his staff) reclassified pages that appear to discuss the pre-9/11 NSA TSP. The declassified redacted May 6, 2004 OLC opinion discussed the President's inherent unlimited Article II authority as the Commander-in-Chief to authorize the NSA to take actions at all times, not just during wartime and after 9/11. This OLC FISA Memorandum explained an Article II FISA "secret law:"

> The President's authority in this filed is sufficiently comprehensive that the entire structure of federal restrictions for protection national security information has been created solely by presidential order, not by statute. See generally Department of the Navy v Egan, 484 U.S. 5187, 527, 530 (1988); See also New York Times Co. v United States, 403 U.S. 713, 729-730 (1971)(Stewart, J., concurring)("(I)t is the constitutional duty of the Executive-as a matter of sovereign prerogative and not as a matter of laws the courts know law—through the promulgation and enforcement of executive regulations, to protect the confidentiality necessary to carry out its responsibilities in the field of international relations and national defense."). Similarly, the NSA is entirely a creature of the Executive-it has no organic statute defining or limiting its functions. (redacted b1, b3). Id. 45. Emphasis added.

153. The May 18, 2011 declassified Top Secret May 6, 2004 Memorandum explained that pursuant to the Article II "Unitary Executive" theory, the Article I Congress did not have the constitutional authority to encroach upon the President's Commander in Chief duties if the Attorney General determined that an Article I statute rendered it "impossible for the President to perform his constitutionally prescribed functions" to protect the national security:

> Even if we did not conclude that (redacted b1,b3) was within the core of the Commander-in-Chief power with which Congress cannot interfere, we would conclude that the restrictions in the FISA would frustrate the President's ability to carry out his constitutionally assigned functions as Commander in Chief and are impermissible on that basis. As noted above, even in prior opinions suggesting that Congress has the power to restrict the Executive's actions in foreign intelligence collection this Office has always preserved the caveat that such restrictions would be permissible only where they do not "go so far as to render it impossible for the President to perform his constitutionally prescribed functions." Redacted b5. Id. 70. Emphasis Added.

154. On March 18, 2011, former-AAG of the OLC Goldsmith ratified the validity of his May 6, 2004 Memo on his LawFare Blog. DOJ Releases Redacted Version of 2004 Surveillance Opinion. "I continue to believe that the memorandum provides a sound analysis of a difficult set of legal issues encountered in a difficult context." http://www.lawfareblog.com/2011/03/doj-releases-redacted-version-of-2004-surveillance-opinion/

155. The plaintiff believed that AG Holder's March 18, 2011 declassification of much of the Top Secret May 6, 2004 OLC FISA Memorandum, enhanced the chances for a Robert II v CIA and DOJ quiet settlement. Domestic terrorists knew of the existence of the NSA domestic surveillance program data banks from reading the Washington Post "Top Secret America" series. The NSA TSP issue had now evolved to whether CIA Director Panetta intended to maintain a "continued classification" status for the 1984-2011 CIA "sources and methods" that included CIA's continued use of CIA Director Casey's "sources and methods" of data mining pre-9/11 NSA TSP data banks without there being § 413 (a) Notification to Congress of the data mining.

LL. The March 21, 2011 Second Circuit Amnesty v Clapper decision

156. On March 21, 2011, the Second Circuit decided Amnesty v Clapper, 638 F.3d 118 (2d Cir. 2011), and established a standing standard for U.S. citizens to file a Bivens action alleging that they had been illegally wiretapped by the NSA TSP. The plaintiff could cite to this

decision in his putative Bivens action alleging that his First Amendment right of access to the courts were violated by 1986-2011 DOJ attorneys who had covered up the Robert wiretapping. He would cite to FOIA requested documents that carry his heavy burden to prove the elements of this First Amendment tort as explained in Christopher v. Harbury, 121 S. Ct. 2171 (2001).

157. Plaintiff believed that this standing decision would enhance the probability of AG Holder accepting his quiet settlement offer. He assumed Associate DAG Baker would inform AG Holder that the Robert VIII v DOJ, HHS, and SSA FOIA requested "Robert v Holz" documents that had been withheld pursuant to FOIA Exemption 5, were connect-the-dots documents to the Robert VII v DOJ "FISC Robert" documents that he had read on March 1, 2004 as OIPR Counsel when he affirmed the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense to withhold these documents. He assumed that Associate DAG Baker would inform AG Holder the reasons why AG Gonzales' December 22, 2005 § 413 (a) of the National Security Act letter provided retroactive Notification of the 2001-2005 post-9/11 NSA TSP, but not the 1984-2001 pre-9/11 NSA TSP. He assumed that Associate DAG Baker would inform AG Holder the reasons that AG Gonzales had intentionally withheld Robert wiretapping facts from the Second Circuit in his April 3, 2006 Robert VII v DOJ letter Brief filed in response to the Second Circuit's teed up FISA standing question as to whether the FISA "aggrieved person" standard, 18 U.S.C. § 1806 (f), applied to Robert. Based on those assumptions, plaintiff believed that AG Holder would conclude that based on Amnesty v Clapper, Robert could establish that he had standing to argue that he had been illegally wiretapped by the NSA TSP.

MM. The May 18, 2011 Second Ciruit Robert VIII v DOJ, HHS, SSA Brief of AG Holder

158. On May 18, 2011, AG Holder filed his Robert VIII v DOJ, HHS, and SSA Brief and defended all of the FOIA decisions that had been made prior to his March 19, 2009 FOIA

Guidelines with its presumption of disclosure standard. AG Holder did not discuss the FISA "secret law" contained in the March 18, 2011 declassified and reclassified Top Secret May 6, 2004 OLC FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft.

159. AG Holder also did not discuss the Second Circuit's March 21, 2011 Amnesty v Clapper decision. This was with the knowledge of Robert's grave allegation that AG Gonzales had in Robert VII v DOJ intentionally withheld material facts from Judge Garaufis and Second Circuit re the NSA wiretapping of Robert, in his April 3, 2006 letter-Brief that addressed the Second Circuit's teed up question whether Robert was an "aggrieved person" by application of the FISA statute, 18 U.S.C. 1806 (f). See Robert VIII petition for writ of certiorari pp. 13-16.

NN. The May 22, 2011 60 Minutes and May 23, 2011 The New Yorker news reports re NSA "whistleblower" Russell Drake and his "leaks" re the pre-9/11 NSA TSP data mining

160. On May 16, 2011, The New Yorker magazine pre-released Jane Mayer's May 23, 2011 article "The Secret Sharer," The New Yorker, May 23, 2011. On May 22, 2011 60 Minutes interviewed NSA "whistleblower" Drake in its segment "U.S. v Whistleblower Thomas Drake." These news reports enhanced plaintiff's belief that CIA Director Panetta would accept the quiet settlement offer because these reputable news reports informed the public that a pre-9/11 NSA TSP existed and that NSA Directors had illegally data mined these NSA TSP data banks.

161. Investigative reporter Mayer identified former NSA employee Russell Drake as the "leaker" who was unidentified in the May 18, 2006 article by Baltimore Sun reporter Siobhan Gorman. "In what intelligence experts describe as rigorous testing of Thin Thread in 1998, the project succeeded at each task with high marks." "NSA Killed System That Sifted Phone Data Legally," Baltimore Sun, 5-18-06. http://www.commondreams.org/headlines06/0518-07.htm.

162. Mayer reported the May 18, 2006 confirmation hearing testimony of CIA Director Nominee Hayden, the 1999-2005 NSA Director:

> On May 18, 2006, the day that Hayden faced Senate confirmation hearings for a new post— the head of the C.I.A.— the *Sun* published Gorman's exposé on Thin Thread, which accused the N.S.A. of rejecting an approach that protected Americans' privacy. Hayden, evidently peeved, testified that intelligence officers deserved 'not to have every action analyzed, second-guessed, and criticized on the front pages of the newspapers.' Mayer, at 14. http://www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer

163. Mayer reported that NSA "whistleblower" Drake's motivation for "leaking" NSA secrets to investigative reporter Gorman in 2006 was the lying by USG officials:

> They were lying through their teeth. They had chosen to go an illegal route, and it wasn't because they had no other choice." He also believed that the Administration was covering up the full extent of the program. "The phone calls were the tip of the iceberg. The really sensitive stuff was the data mining." He says, "I was faced with a crisis of conscience. What do I do— remain silent, and complicit, or go to the press? Id. at 15.

164. In his 60 Minutes interview, NSA "whistleblower" Drake explained that he believed that AG Holder had indicted him for violation the Espionage Act to deter other USG "whisteblowers" from leaking facts re the illegal NSA data mining. The Court can view his explanation and make its own assessment of Mr. Drake's credibility and the use of the Espionage Act indictment. http://www.cbsnews.com/video/watch/?id=7366912n&tag=related;photovideo. Plaintiff requests that the Court take Judicial Notice of this interview for the limited purpose of a fact finding that a 60 Minutes interview of Drake is posted on the 60 Minutes internet cite.

165**.** The May 22, 2011 60 Minutes interview was in the public domain after AG Holder had filed his Second Circuit Robert VIII v DOJ, HHS, and SSA Brief. The Robert II v CIA and DOJ plaintiff anticipated that after viewing the May 22, 2011 60 Minutes interview of NSA "whistleblower" Drake, AG Holder would begin negotiations with the plaintiff re the ongoing quiet settlement offer. This would end the FOIA litigation in which plaintiff was seeking documents that proved whether he had been the target of the illegal CIA pre-9/11 NSA TSP.

166. On May 31, 2011, plaintiff filed his Reply Brief. He discussed the significance of these news reports and the March 18, 2011 reclassified May 6, 2004 FISA "secret law" Memo. The filing of the Reply Brief also did not trigger any quiet settlement negotiations.

OO. The June 1, 2011 Drake CIPA Order and the June 9, 2011 decision of AG Holder to abandon the Espionage Act charge and accept the Drake plea agreement

167. On June 1, 2011, U.S.A. v. Drake ND of Maryland Judge Richard Bennett issued an Order Regarding Admissibility of Classified Information. This was based on AG Holder's Classified Information Procedures Act (CIPA) Declaration informing the Court why itemized classified information could not be entered into evidence at the Espionage Act trial of Russell Drake. See Order Regarding Admissibility Classified Information and list of classified documents. http://static1.firedoglake.com/28/files/2011/06/110601-CIPA-Admissibility.pdf.

168. On June 9, 2011, AG Holder agreed to a plea bargain whereby the USG abandoned the Espionage Act indictment and "whistleblower" Drake agreed to plead guilty to unauthorized Access to a government computer without any jail time. See Shane, Ex-N.S.A. Aide Gains Plea Deal in Leak Case; Setback to U.S., New York Times, 6-9-11. The June 10, 2011 DOJ Press Release "Former NSA Senior Executive Pleads Guilty to Unauthorized Access of Government Computer" explained the reason why AG Holder accepted the plea agreement:

> According to the government's motion, pre-trial rulings by the court under the Classified Information Procedures Act (CIPA) would have required that highly classified information appear, without substitution, in exhibits made publicly available at trial. The NSA concluded that such disclosure would harm national security. Emphasis Added.
> http://www.justice.gov/opa/pr/2011/June/11-crm-760.html

169. On July 16, 2011, Judge Bennett would order no jail time for the defendant. NSA whistleblower Drake commented on how this decision was a check and balance on the DOJ

strategy of indicting him for a violation of the Espionage Act. "Wow," he said. "There is a third branch of government." Shane, No Jail Time in Trial Over N.S.A. Leak, NY Times, 7-16-11.

170. Plaintiff believed that AG Holder's decision to accept the Drake plea agreement that included the abandonment of the Espionage Act indictment, would trigger quiet settlement negotiations. AG Holder's CIPA Declaration had revealed a list of documents that corroborated the allegations that NSA "whistleblower" Drake had made including the allegation that NSA Director Hayden knew in 1999 that NSA Directors had data mined the NSA TSP data banks.

PP. The June 21, 2011 Confirmation of CIA Director Panetta to be DOD Secretary Panetta by a 100-0 vote

171. On June 21, 2011, the Senate confirmed CIA Director Panetta to be President Obama's DOD Secretary by a 100-0 vote. CIA Director Panetta would take his oath as DOD Secretary on July 1, 2011 and become the civilian "command and control" officer of DOD Cyber Commander Lt. General Alexander who had custody of the 1984-2011 NSA TSP data banks.

172. Plaintiff believed this would lead to the quiet settlement. DOD Secretary Panetta knew the secrets of the CIA domestic "black operation" at NSA and would recommend that President Obama file a a § 413 (b) of the National Security Act "corrective action" plan to cure illegal intelligence activities. If a classified "corrective action" plan was filed, then it would be necessary that there be a quiet settlement of Robert II v CIA and DOJ.

QQ. The June 23, 2011 Senate Intelligence Committee testimony of CIA Director Nominee Petraeus and the unanimous June 30, 2011 Confirmation of CIA Director Petraeus

173. On June 23, 2011, in his opening Statement for his Senate Intelligence Committee Confirmation hearing, General David Petraeus explained why he would be resign his military commission. "My goal has always been to "speak truth to power," and I will strive to do that as Director of the CIA, if confirmed." He explained why he wanted to be a civilian. "There have

also been concerns voiced over "militarization" of the intelligence community in general and the CIA in particular. One reason I will retire before assuming the directorship, if confirmed, is to allay such concerns. Beyond that, I have no plans to bring my military brain trust with me to the Agency." Emphasis Added. http://intelligence.senate.gov/110623/statement.pdf.

174. On June 30, 2011, the Senate unanimously confirmed President Obama's nomination of General Petraeus as the CIA Director to replace CIA Director Panetta. He would become the CIA Director on September 6, 2011 after his August 31, 2011 military resignation.

175. Plaintiff believed that some time after CIA Director Petraeus had taken his oath on September 6, 2011, he would instruct CIA General Counsel Preston to begin quiet settlement negotiations to end all CIA FOIA litigation. Plaintiff believed that CIA Director Petraeus would not tolerate CIA employees presenting him with false "Curveball" facts that would result in his presenting false facts to President Obama re CIA intelligence activities. Plaintiff believed that CIA Director Petraeus would read FOIA requested withheld classified documents in order to provide accurate facts to President Obama so that the President could file a § 413 (b) of the National Security Act "corrective action" plan to cure prior illegal CIA intelligence activities.

176. Plaintiff believed that CIA General Counsel Preston would provide accurate facts to CIA Director Petraeus re the 1984-2011 collateral damage that has resulted from CIA Director Casey's "black operations" at IMC and NSA. Plaintiff believed that CIA General Counsel Preston knew that CIA Director Petraeus' Commander in Chief was President Obama and not the 2011 *faux* "Commander in Chief" who had been implementing the FISA "secret law" of AG Meese by ordering continued data mining of the pre-9/11 NSA TSP data banks in the custody of DOD Cyber Commander-NSA Director Lt. General Alexander without a FISC Order.

177. As of the date of this Affidavit, neither CIA General Counsel Preston or EDNY U.S. Attorney Lynch have contacted the plaintiff re a joint agreement to request that the Court be in charge of a process that could lead to a quiet settlement of this FOIA action by the withdrawal of the Robert FOIA complaints and all of the plaintiff's FOIA requests. Upon information and belief, CIA General Counsel Preston has not yet informed CIA Director Petraeus of the content of the July 27, 2010 FOIA requested four one page 1985 "North Notebook" documents being withheld by the CIA as classified documents notwithstanding the President Obama's E.O. 13526 § 3.3 Automatic Declassification (ADR) 25 year standard (1985+25=2010). Upon information and belief, CIA General Counsel Preston has not yet informed CIA Director Petraeus of the content of the FOIA requested # 5 "All Robert II v CIA "c (3) exclusion" *ex parte* Declarations" which reveal whether CIA General Counsels have informed this Court of the "secret law" upon which CIA Director Casey based his 1980s domestic CIA "black operations."

RR. September 6, 2011 Second Circuit Robert VIII v DOJ, HHS, and SSA decision

178. On September 6, 2011, the Second Circuit decided Robert VIII v DOJ, and HHS, and affirmed all of Judge Garaufis decisions and orders. However, the Second Circuit modified the December 14, 2005 Clerk's Judgment whereby Robert is enjoined from filing a new FOIA complaint without a pre-clearance Order of Judge Garaufis. Robert is not enjoined from filing a FOIA request without a pre-clearance Order of Judge Garaufis.

179. On December 1, 2011, Robert II v CIA and DOJ plaintiff filed his November 30, 2011 Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari. Plaintiff believes that when SG Verrrelli performs his due diligence duty in preparing AG Holder's Brief in opposition to the petition of a writ of certiorari, he will read the five FOIA requested documents discussed

in the Robert VIII petition for a writ of certiorari, and recommend that AG Holder agree to the petitioner's ongoing quiet settlement offer.

SS. **The September 13, 2011 *de novo* July 27, 2010 FOIA requests**

180. On September 13, 2011, plaintiff sent *de novo* July 27, 2010 FOIA requests to the CIA, DOJ, FBI, ODNI, NSA, NARA, OMB, HHS, and SSA FOIA Officers. He enclosed copies of the Second Circuit's September 6, 2011 Robert VIII v DOJ, HHS, and SSA decision that modified the Robert VIII Clerk's Judgment that enjoined Robert from filing a FOIA complaint, not a FOIA request, without a pre-clearance Order of Judge Garaufis.

181. As of the date of this Affidavit, most of the plaintiff's September 13, 2011 *de novo* FOIA requests have not been docketed. If the application for permission to file a January 13, 2012 Robert II v CIA and DOJ Supplemental Affidavit is granted, then plaintiff will detail the status of each one of the September 13, 2011 de novo FOIA requests. He is seeking this mosaic of documents to present to CIA Director Petraeus to prove that plaintiff's almost incredible allegations are true so that CIA Director Petraeus will instruct CIA General Counsel Preston to begin the process of securing a quiet settlement of this FOIA action.

TT. The September 21, 2011 Second Circuit Amnesty v Clapper decision to deny AG Holder's petition for a rehearing

182. On September 21, 2011, the Second Circuit denied AG Holder's Amnesty v Clapper petition for a rehearing. As a result, plaintiff will assert that he has standing to file a Bivens complaint that his First Amendment right of access to the courts has been violated by DOJ attorneys who have participated in the cover up of the illegal NSA wiretapping of Robert.

183. This decision enhances the probability that CIA Director Petraeus and AG Holder will agree to a quiet settlement. If AG Holder files an Amnesty v Clapper petition for a writ of certiorari, then this will be with Associate DAG Baker's knowledge that the Robert VIII "Robert

v Holz" documents withheld pursuant to FOIA Exemption 5, are connect-the-dots documents to the Robert VII "FISC Robert" documents that were withheld pursuant to the CIA's use of FOIA Exemption 1 and "Glomar Response" defense. He knows those documents contain evidence that Robert was the target of illegal wiretapping by the 1980s NSA TSP.

UU. The December 2, 2011 AG Holder decision to waive executive privilege and provide Congressional Oversight Committee with DOJ e-mails and documents that could have been withheld by President Obama claiming executive privilege.

184. On December 2, 2011, AG Holder waived executive privilege and provided a Congressional Oversight Committee with DOJ e-mails and documents that could been withheld if President Obama claimed executive privilege. "The Justice Department on Friday turned over to Congress nearly 1,400 pages of "highly deliberative internal communications" about the drafting of a February letter in an effort to show that agency officials did not knowingly misled lawmakers in connection with a disputed gun trafficking investigation called Operation Fast and Furious." Savage, "Justice Department Counters Claim That It Misled Congress in Gun Inquiry," NY Times, 12-3-11.

185. AG Holder's decision to waive executive privilege increases the probability of a quiet settlement. President Obama will be making his own executive privilege decision as to the FOIA requested NARA "Perot" and NARA "Peter Keisler Collection" documents that are subject to the an executive privilege assertion by a representative of the Estate of President Ronald Reagan. Those two sets of documents are connect-the-dots with the four 1985 CIA September 13, 2011 *de novo* July 27, 2010 FOIA requested CIA "North Notebook" documents that are subject to CIA Director Petraeus' FOIA Officer docketing and processing the FOIA request for 26 year old CIA documents. As a result, President Obama may seek the

recommendation of CIA Director Petraeus as to the risk to the 2012 national security risk if the 1987 "Perot" documents are released to the public.

186. Plaintiff believes that when CIA General Counsel Preston informs CIA Director Petraeus that President Obama will be making an executive privilege decision as to the "Perot" and "Peter Keisler Collection" documents, then CIA Director Petraeus will read the four 1985 CIA "North Notebook" documents along with the November 26, 2011 internet posted March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush." Then when CIA Director Petraeus reads the "Perot" documents, he will learn whether CIA Director Webster (May 26, 1987-August 31, 1991), knew as 1985 FBI Director Webster that CIA Director Casey was conducting illegal domestic "black operations" at IMC and at the NSA.

VV. The December 7, 2011 letter from NARA Deputy Archivist Wall

187. On December 7, 2011, NARA Deputy Archivist Debra Steidel Wall responded to plaintiff's September 13, 2011 *de novo* NARA FOIA request for the release of four one page classified 1985 "North Notebook" documents. She advised that the NARA Special Access FOIA Officer has assigned the NARA tracking number NW 34895 to the FOIA request for the following four one page classified 1985 "North Notebook" documents:

1. 9/3/85 North-FBI Revell "North Notebook" log entry. http://www.snowflake5391.net/9-3-85North-FBI.pdf.
2. 9/6/85 North-CIA-FBI Exemptions 1, 3 and NHAO http://www.snowflake5391.net/9-6-85NorthCIA.pdf.
3. 9/16/85 North-Call to Perot Exemptions 1 and 3 http://snowflake5391.net/perot.pdf.
4. 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos http://www.snowflake5391.net/medivachelos.pdf.

188. The NARA Deputy Archivist advised the plaintiff that the NARA Special Access Officer has sent these four classified 1985 documents to CIA, DOD, and FBI for their review:

> While these pages are part of the IC Walsh records, they do contain the equities of the Central Intelligence Agency (CIA), Department of Defense (DOD), and the Federal Bureau of Investigation (FBI). NARA referred these pages to these agencies for consultation since the information is currently restricted in accordance with FOIA Exemption 1, national security. Once the staff receives these referrals back from the CIA, DOD, and FBI, then a final disclosure determination will be made concerning these pages. Emphasis Added.

189. The December 7, 2011 NARA letter was sent after the National Security Archive on November 26, 2011 posted Independent Counsel Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush." Upon information and belief, because of this internet posted IC Walsh Memorandum, NARA Archivist David Ferriero reevaluated the NARA FOIA position re classified Iran-Contras Affairs documents that are more than 25 years old and are subject to the December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification review 25 year standard. Upon information and belief, he anticipated that in 2012 historians and investigative reporters would be filing their own FOIA requests based on this internet posted historic IC Walsh March 21, 1991 Memorandum.

190. In NARA Deputy Archivist Wall's December 7, 2011 letter, the NARA Deputy Archivist most graciously suggested the use of the NARA mediations services. "As part of the 2007 FOIA amendments, the Office of Government Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation."

191. If CIA Director Petraeus, DOD Secretary Panetta, and FBI Director Mueller read these four one page 1985 classified "North Notebook" documents and do not declassify the documents, then NARA OGIS mediation will be available. However, if they declassify these documents, then this may lead to a quick and quiet settlement of this FOIA action.

WW. Plaintiff's Robert II v CIA and DOJ prosecution plan

192. Plaintiff presents the following proposed prosecution plan for this FOIA action. This plan that would be supplemented by a more detailed plan that would be included in a January 13, 2012 Supplemental Affidavit that will be drafted after AG Holder's litigation position is revealed in SG Verrelli's Robert VIII Brief in opposition to the petition for a writ of certiorari. The intent of this prosecution plans is to be a predicate for the co-defendants' Motion to Dismiss if co-defendant CIA Director Petraeus decides not to declassify the September 13, 2011 *de novo* FOIA requested classified four one page 1985 "North Notebook" documents subject to CIA Director Petraeus' review pursuant to the NARA Special Access NW 34895 review process.

193. First, on January 13, 2012, the plaintiff will serve U.S. Attorney Lynch with a certified RRR letter placing her on Notice of the interrelationship between CIA Director Petraeus' review of the four classified "North Notebook" documents and the litigation position of co-defendant Holder in Robert VIII v DOJ, HHS, and SSA in SG Verrelli's Brief in opposition to the petition for a writ of certiorari. He will inform U.S. Attorney Lynch that DAAG of the Civil Division Commercial Division Michael Hertz knows that a copy of the joint FBI-DOJ-HHS task force "IMC Investigation Final Report" document can be located within DOJ's classified IMC *qui tam* file that is in the DOJ or NARA classified archives.

194. Second, on January 13, 2012, the plaintiff will serve U.S. Attorney Lynch with a certified RRR letter placing her on Notice of her due diligence duty to read IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" that on November 26, 2011 was posted on the internet and all FRCP 11 signed pleadings filed by the co-defendants in Robert v CIA and Robert II v CIA and DOJ, and then determine whether there had been any misrepresentations of fact or law made to this Court. That January 13, 2011

letter will place U.S. Attorney Lynch on Notice that she has an April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3) duty to cure misrepresentations of fact and law made to this Court by the co-defendants or their representatives by filing an FRCP 11 signed Declaration with this court and serving that Declaration on CIA Director Petraeus by February 3, 2011.

195. Third, if by February 3, 2012, the NARA Special Access Officer does not render a NW 34895 decision, then the plaintiff will request a pre-Motion conference re plaintiff's intent to file a Robert II v CIA and DOJ Motion seeking a Mandamus Order whereby the Court orders CIA Director Petraeus to render a decision as to whether he will declassify the four one-page 1985 "North Notebook" documents that are subject to Automatic Declassification review and are connect-the-dots documents to the Robert VIII "IMC Investigation Final Report" document.

196. Fourth, on February 3, 2011, the plaintiff will formally request NARA OGIS for mediation services to secure release of the four one-page 1985 "North Notebook" documents. The plaintiff will inform the NARA OGIS that these four one page documents are connect-the-dots documents to the September 13, 2011 *de novo* FOIA requested DOJ "IMC Investigation Final Report" document and NARA "Perot", NARA "Peter Keisler Collection", and NARA "Robert v National Archives 'Bulky Evidence File'" documents. The plaintiff will request an omnibus mediation service for all of these FOIA requested connect-the-dots documents.

197. Plaintiff believes that this litigation plan will lead to CIA Director Petraeus reading the four 1985 one page classified "North Notebook" documents with the knowledge that IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" was posted on the November 26, 2011 internet. He will seek guidance from CIA General Counsel Preston as to whether the "Unitary Executive" theory of AG Meese as explained in the AG opinions cited in the March 21, 1991 Memorandum, apply to his decision.

WW. Summary

198. Plaintiff files this lengthy Affidavit to inform the Court of actions taken by the parties that were not recorded on the docket sheet. His litigation goal in Robert I v CIA and Robert II v CIA and DOJ has been to secure a quiet settlement of these FOIA actions that would cure some of the violations of federal laws that plaintiff has asserted have occurred without the knowledge of Presidents Reagan, Bush, Clinton, Bush, and Obama. Plaintiff's grave assertion of serial federal law violations is corroborated by IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" that on November 26, 2011 was posted on the internet. That document contains facts relevant to Robert II v CIA and DOJ that the co-defendants had not provided this Court.

199. Plaintiff seeks permission to file a Supplemental Affirmation by January 13, 2012 to inform the Court of the litigation position of AG Holder as revealed in SG Verrelli's Robert VIII v DOJ, HHS, and SSA Brief in opposition to the petition for a writ of certiorari. Plaintiff believes that AG Holder will be making a critical litigation decision in Robert VIII v DOJ, HHS, and SSA that will directly affect his litigation position in Robert II v CIA and DOJ as to whether he would agree to participate in a settlement conference under the auspices of the Court that could lead to a quiet settlement of Robert II v CIA and DOJ.

WHEREFORE, plaintiff respectfully requests that the Court grant his application for permission to file a Supplemental Affidavit by January 13, 2012.

Dated: December 14, 2011

_____
Charles Robert, pro se

Sworn to before me this
14 th day of December, 2011

_____
Notary Public