

CONGRESSIONAL REFERENCE

To The

UNITED STATES COURT OF FEDERAL CLAIMS

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Congressional Reference No. 98-887X

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RICHARD M. BARLOW, )  
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 Plaintiff, )  
 )  
 v. ) (Senior Judge Bruggink)  
 )  
 THE UNITED STATES, )  
 )  
 Defendant. )

DEFENDANT'S MOTION FOR CLARIFICATION REGARDING  
THE PROTECTIVE ORDER CONCERNING STATE SECRETS

Pursuant to Rule 7 of the Rules of the United States Court of Federal Claims ("RCFC"), defendant, the United States, respectfully requests that the Court clarify the scope of the Court's Opinion and Order regarding the Government's proper invocation of the state secrets privilege in this case, filed on August 3, 2000.

BACKGROUND

In a motion filed on March 6, 2000, the United States moved for a protective order, "upon the grounds that the Executive state secrets privilege prohibits disclosure of information that the United States has been ordered to produce." App. 1 (emphasis

make little sense for the Court to protect the documents that contain this highly sensitive information from disclosure, but now allow the dissemination of this information through oral testimony at trial. The Court's August 3, 2000 order granting our motion for a protective order should not be read in such a restrictive manner.

This issue is a very important one for purposes of the pending trial in this case. While it is clear that Mr. Barlow should be - and will be - able to litigate the relevant issues remaining in this case, there is no basis to conclude that he or his counsel should be able to openly reveal and discuss information determined to constitute state secrets, based upon Mr. Barlow's prior knowledge gained from his past employment with the CIA.<sup>1</sup> This is true even though the trial will be closed because, with minor exception, no one who will be in attendance at the trial has the necessary clearances or access to hear this information. Additionally, there is certainly no valid reason that this information needs to be part of this trial record, pertaining to a dispute regarding a proposed personnel action.

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<sup>1</sup> As we have previously informed Mr. Barlow's counsel, virtually all of the classified information that could be relevant in this case is information over which the state secrets privilege has been invoked. Most any of the other classified information that may arise would be objectionable on grounds of relevance.