(1)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PHILIP AGEE,

Plaintiff,

v. C.A. No. 90-1350(GAG)

JAMES A. BAKER, Secretary of State, Department of State,

Defendant.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Defendant hereby opposes plaintiff's cross-motion for summary judgment in this action. For a full statement of the grounds for this opposition, defendant respectfully refers the Court to the attached memorandum of points and authorities.

Respectfully submitted,

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Preliminary Statement

Ignoring the events of eleven years ago concerning his ability to enjoy "the sponsorship of his travels by the United States," Haig v. Agee, 453 U.S. 280, 309 (1981), plaintiff frames his legal challenges to the Department's refusal to reissue a passport to him as if this is the first occasion that defendant, or this Court, has addressed the matter. In fact, as the Court knows, defendant, in an action upheld by the Supreme Court, has previously found that plaintiff's international travels had resulted in serious damage to the national security and foreign policy of the United States and, as a result, that plaintiff should no longer be permitted to travel under the sponsorship of the United States. Haig v. Agee, supra. That history is significant, for plaintiff does not stand before the Court as one at the beginning of a process. Rather, the process has been completed and has resulted in the lawful determination that he no

longer may travel under the sponsorship of the American government.[1]

Plaintiff's arguments thus proceed from an erroneous factual viewpoint and rest on faulty legal premises. Under applicable law, it is plaintiff, already adjudged as a threat to national security and not entitled to an American passport, who bears the burden of showing that those circumstances have changed. 22 C.F.R. § 51.70(b)(5). Moreover, as we previously demonstrated, plaintiff is not entitled to the full panoply of procedural rights sought in his complaint.[2] As to those procedures available to plaintiff, the Department fully complied with applicable requirements. Plaintiff's summary judgment motion should be denied and summary judgment granted in defendant's favor.

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[1] Plaintiff begins his brief incorrectly by stating that the issue "is whether the Secretary of State must issue a passport to plaintiff...." Pl. Brief at 1. As all of plaintiff's claims, save one, are procedural, the primary issue is whether the Secretary's decision is procedurally correct or whether a remand is necessary. The one claim which arguably might involve the issuance of a passport, the claim that the hearing below was untimely under 22 C.F.R. § 51.81, is frivolous, as discussed infra.

[2] Although plaintiff has asserted numerous claims in his complaint, in response to which defendant has moved for summary judgment, several of these claims are ignored in plaintiff's opposition and, therefore, are conceded. Cf. Local Rule 108(b). These include the claims that the Administrative Procedure Act was violated, that 22 C.F.R. § 51.70 violates the First Amendment, that plaintiff was entitled to prehearing discovery, or that 18 U.S.C. §§ 2518 or 3500 were violated. Plaintiff concedes that he is abandoning those claims. Pl. Brief at p. 65, n.24.

## Argument

### I. Plaintiff Bears The Burden Of Proving Changed Circumstances

In the original revocation proceeding in 1979, defendant, as the moving party, bore the burden of showing that plaintiff's activities abroad threatened the national security and foreign policy of the United States. 22 C.F.R. § 51.70(b)(4).[3] Plaintiff now argues that the Department retains this burden indefinitely and that the Department must, anytime plaintiff chooses to submit an application, constantly generate new reasons why a passport should not be issued and demonstrate those reasons by clear and convincing evidence. Plaintiff's argument is both illogical and contrary to law.

Plaintiff first argues that the burden of proof is placed on the Department under its regulations despite the express language of the rules and the decision of the Department's Board of Review to the contrary. Under 22 C.F.R. § 51.70(b)(5), a passport may be denied to one previously the subject of a revocation action where the applicant "has not shown that a change in circumstances since the adverse action warrants issuance of a passport." (emphasis added). The plain meaning of this language is

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[3] Plaintiff chose not to contest the original revocation proceeding on the facts and challenged only the legality of the Department's regulations. Having consciously waived his right to challenge the facts upon which the Department relied, plaintiff must accept the consequences of that decision, including the validity of the Department's finding of fact that plaintiff's travels abroad threaten the national security and foreign policy interests of the United States.

unmistakable. The burden of proving changed circumstances rests with plaintiff.

Indeed, this precise issue was the subject of the Department's petition for rehearing before the Board of Appellate Review. The Board expressly held that the burden of proof rests with plaintiff.

> We appreciate that the proper allocation of the burden of proof, that is, the burden of establishing the case and the burden of going forward with the evidence, must be observed in administrative proceedings. Nor do we dispute that Agee has the burden of showing that a change in circumstances since the earlier revocation of his passport warrants issuance of a passport.

Board's Decision, April 11, 1989 (Plaintiff's Exhibit 6) (emphasis added). The Board ruled only that, after plaintiff's initial showing and the Department's showing, "we are of the view that the Department had the burden of going forward on that issue with the presentation of the evidence." Id. (emphasis added). The Board's ruling thus sharply contradicts plaintiff's view. As an authoritative interpretation of its own agency's regulations, the Board's interpretations are entitled to great weight, especially here, where that interpretation is completely consistent with the language of the regulation at issue. Udall v. Tallman, 380 U.S. 1, 16-17 (1965), Western Union Telegraph Co. v. F.C.C., 815 F.2d 1495, 1503 (D.C. Cir. 1987).[4]

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[4] Plaintiff's argument that, even under the regulations, the Department was required to prove that plaintiff had provided assistance to foreign governments, Pl. Brief at 20-21, because these charges were not contained in the 1979 proceedings, misses (continued...)

Plaintiff next argues that the Department must bear the burden of proof because it seeks to deny his claimed constitutional right to travel. This argument ignores history. Plaintiff has no constitutional right to travel on an American passport and plaintiff's application is not for the exercise of a right now held but for the restoration of a right lawfully taken from plaintiff. Contrary to plaintiff's arguments, and the cases cited at p. 22 of his Brief, there is no "proposed deprivation" of plaintiff's rights, only a question of whether an existing, and lawful, deprivation should continue.[5]

Citing Shatz v. Dept. of Justice, 873 F.2d 1089 (8th Cir. 1989), and Roach v. National Transportation Safety Board, 804 F.2d 1147 (10th Cir. 1986), cert. denied, 486 U.S. 1006 (1988), plaintiff seems to suggest that administrative agencies always bear the ultimate burden of proof. Plaintiff, however, erroneously bases this argument on the proposition that defendant proposed to take adverse action against plaintiff. The adverse action was taken in 1979 during the initial revocation proceeding. With his application, plaintiff became the proponent of an alteration to the status quo, and may properly be required

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[4](...continued)
the mark. Plaintiff's passport was originally revoked because the Secretary determined that plaintiff's activities abroad harmed the national interest and it is this circumstance which plaintiff bears the burden of proving has changed.

[5] As defendant does not bear the burden of proof, plaintiff's argument that defendant must show plaintiff's lack of entitlement to a passport by clear and convincing evidence is a non sequitur.

to carry the ultimate burden of proof. Blackwood v. INS, 803 F.2d 1165, 1167 (11th Cir. 1986) (resident alien seeking readmittance after returning to foreign domicile bears burden of showing application has merit). See also Pittsburgh and Lake Erie R. Co. v. I.C.C., 796 F.2d 1534, 1539 (D.C. Cir. 1986). The decision in Roach is in keeping with this principle, as the agency was the party seeking a license suspension. In Shatz, the governing statute placed the burden of proof on the agency for denials of registrations, as made clear by the court's citation to 21 U.S.C. § 824(c), immediately following the language cited in plaintiff's brief at p. 18.

Plaintiff's efforts to shift the burden of proof to the Department as a constitutional matter fare no better. Again, this is not a case where the Department has deprived plaintiff of an existing constitutional right. That proceeding occurred in 1979 and plaintiff was lawfully determined to have forfeited any right he might have to a passport. Defendant created no presumption that plaintiff was not entitled to a passport. It conducted a full administrative proceeding with judicial review from this Court to the Supreme Court. Plaintiff's reliance on Bailey v. Alabama, 219 U.S. 219 (1934), and Taylor v. Georgia, 315 U.S. 25 (1942), is misplaced, as both cases involved the creation of statutory presumptions in criminal prosecutions that precluded the presentation of defenses. Such is simply not the case here.

Similarly, plaintiff's citation to Speiser v. Randall, 357 U.S. 513, 525-26 (1958), in which he compares the allocation of the burden of proof here to that of a criminal case, ignores the facts. Unlike a criminal defendant standing accused for the first time, plaintiff's right to a passport has been adjudicated. Plaintiff's status resembles more that of a criminal convict who, in seeking release on a writ of habeas corpus, bears the burden of proving his case. Johnson v. Zerbst, 304 U.S. 458, 468-69 (1938).

Simply put, plaintiff, like any proponent of a change in the status quo, bears the burden of proof.[6] This result is compelled by the plain language of the Department's regulations and none of the authorities cited by plaintiff requires a contrary result. Moreover, plaintiff cannot change this result, or alter the past, through the simple expediency of applying for a new passport.

## II. The Denial Of Plaintiff's Application Was Properly Based On The Record

Plaintiff's argument that the record does not support the decision (Pl. Brief at 26-48) proceeds from two fundamental erroneous premises, that the burden of proof rests on the Department and that the denial of his application is the deprivation of a claimed constitutional right. As demonstrated above, plaintiff bears the burden of demonstrating changed circumstances such that a passport should be reissued to him. Further, plaintiff's right to a passport has already been

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[6] Cf. 5 U.S.C. § 556(d) ("the proponent of a rule or order has the burden of proof.").

adjudicated and plaintiff, seeking relief from that adjudication, seeks the restoration of a constitutional right lawfully taken from him. Once the applicable burdens are clarified, it is clear that plaintiff failed to carry his burden of proof and that the Department's decision was rationally based on the record and was not arbitrary or capricious.[7]

Plaintiff's evidence of changed circumstances consisted solely of evidence that he had engaged in prepublication review by the CIA for a number of manuscripts of books and articles. In response to the information supplied to the State Department by the CIA, however, plaintiff remained silent, with the exception of one item which the Department concedes was the subject of prepublication review, and submitted only objections to the admissibility of the remaining materials. When permitted the opportunity to submit cross-examination after remand from the Board of Appellate Review, he again remained silent.

Now, in this Court, plaintiff does little more than assail the evidentiary quality of the record evidence through a variety of objections and arguments or cite new arguments and references which he failed to introduce below. Plaintiff's arguments, however, go only to the weight of the evidence, not its

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[7] Under 5 U.S.C. § 706, the decision in this case is properly reviewed under the arbitrary and capricious test. As we discussed in our opening brief, plaintiff's claim that the higher standard of review contained in 5 U.S.C. § 556, that of "reliable, probative and substantial evidence" does not apply here. Def. Opening Brief at 16, n.11. Plaintiff has failed to respond to this point and, thus, has conceded it. Local Rule 108(b).

admissibility below,[8] and nothing in those arguments demonstrates that the Secretary's decision is arbitrary or capricious.

Indeed, plaintiff goes so far as to argue that he should be able to judge for himself what CIA information known to him is no longer within the authority of the CIA to review. Under plaintiff's view, any statement by any third party on an issue entitles him to engage in full public discourse on that entire matter.[9] Public speculation or reports of CIA activities does not compel the CIA to divulge its actions. Cf. Military Audit Project v. Casey, 656 F.2d 724, 743-45 (D.C. Cir. 1981) (press reports and speculations over covert CIA activity did not require official disclosure of information concerning activity). Plaintiff is not the arbiter of what information he may disclose under his secrecy agreement. Neither his secrecy agreement nor this Court's injunction allows plaintiff to decide what can be released and what must remain confidential. Indeed, in similar circumstances, the Supreme Court stated:

> When a former agent relies on his own judgment about what information is detrimental, he may reveal information that the CIA -- with its broader understanding of what may

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[8] As we note infra at p. 11, rules of evidence are inapplicable in administrative hearings of this nature. See 22 C.F.R. § 51.86.

[9] For Items 2, 3, 4, 6, and 9, plaintiff attempts to justify his failure to obtain authorization to discuss CIA activities and personnel on media accounts, books, or other sources which may relate in some way to his statements.

> expose classified information and confidential sources -- could have identified as harmful.

Snepp v. United States, 444 U.S. 507, 512 (1980).

Plaintiff also argues that the Department is somehow attempting to punish him for exercising his right to free speech by citing incidents of public speaking by plaintiff in the evidence submitted by the CIA, including plaintiff's call for a "continental front to combat the CIA" and to expose CIA agents (Item 4), his statements that he would "advise and participate completely in whatever program that has as its goal a counter-attack on the CIA," (Item 5), and his statement in a Mexican newspaper that, for every fallen Sandinista, "Two agents of the CIA 'must fall.'" (Item 6). Plaintiff again ignores the Supreme Court's ruling in Haig v. Agee. The Supreme Court held that this same type of activity, such as plaintiffs 1974 call "for a new campaign to fight the United States CIA wherever it is operating," 453 U.S. at 283, n.2, especially when coupled with plaintiff's undisputed exposure of covert CIA personnel without authorization, was not speech, but conduct. 453 U.S. at 305. More importantly, statements attributed to plaintiff -- statements which plaintiff has not denied -- which indicate that he may still be operating to the detriment of the CIA are clearly relevant to the question before the Department, whether changed circumstances existed and whether plaintiff's international

travels no longer posed a threat to national security and foreign policy.[10]

Plaintiff further assails the evidence in the record as being hearsay and inadmissible. Under Department regulations, however, the rules of evidence do not apply to passport proceedings. 22 C.F.R. § 51.86 provides that "[f]ormal rules of evidence shall not apply but reasonable restrictions shall be imposed as to relevancy, competency, and materiality." As to plaintiff's complaint that hearsay was improperly considered (Items 8 and 11), "[i]t has long been settled that the fact finder in an administrative proceeding may consider relevant and material hearsay." Johnson v. United States, 628 F.2d 187, 190 (D.C. Cir. 1980).[11]

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[10] Plaintiff also asserts that his holding of Grenadan and Nicaraguan passports (Item 7) has no nexus to this matter. The Court can take judicial notice of the facts that, at the time, the governments of both countries were hostile to the United States and, indeed, the United States engaged in military action against Grenada. Itek Corp. v. First National Bank of Boston, 511 F. Supp. 1341, 1349 (D. Mass. 1981), vacated on other grounds, 704 F.2d 1 (1st Cir. 1983) (court took notice of conditions in Iran and hostility toward American business interests); Henderson v. Bryan, 46 F. Supp. 682, 685 (S.D. Cal. 1942) (court took notice of hostilities). That foreign governments hostile to the United States sought to facilitate plaintiff's travels is by no means irrelevant to the question of whether plaintiff showed that his travels were no longer a threat to the national security and foreign policy of the United States.

Similarly, his association as an advisor to a publication that undertook to expose CIA personnel (Item 12) is also related to the issue of whether plaintiff had continued in his efforts to expose CIA activities and personnel or whether those circumstances had changed.

[11] Indeed, an administrative decision can be based on hearsay evidence. Johnson, supra; Hoska v. United States Dept. of the Army, 677 F.2d 131, 138 (D.C. Cir. 1982).

At bottom, however, plaintiff's primary complaint about the record is that does not support the conclusion reached by the Secretary. He attempts to bolster this position, in part, by adding new evidence for this Court's consideration that is outside the scope of the administrative record.[12] The Court, however, is confined to the evidence in the administrative record compiled before the agency in reviewing the Department's decision. Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44 (1985); Camp v. Pitts, 411 U.S. 138, 145 (1973); Edison Electric Institute v. OSHA, 849 F.2d 611, 623, n.16 (D.C. Cir. 1988). Plaintiff cannot now seek to introduce new evidence, having expressly waived his rights to do so below by refusing to submit evidence, except as to one item, and by abandoning the administrative process when given the opportunity to conduct cross-examination.

Under the Administrative Procedure Act, 5 U.S.C. § 706, the Department's decision must be upheld so long as it is not arbitrary or capricious. Under this standard, the Court's review of the factual record is narrow and it cannot substitute its judgment for that of the agency. The Department's decision must be upheld if it is rationally based on the record. Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Insurance Co., 426 U.S.

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[12] As noted above, plaintiff seeks to show here that his disclosures in Items 2, 3, 4, 6, and 9 were widely known and, therefore, disclosure would cause no harm to the United States. He also argues that the disclosure in Item 3 was part of previously approved speech. Plaintiff made no effort to introduce this evidence below.

29, 42-43 (1983). Here, the evidence before the Secretary showed that, while plaintiff had submitted some materials for prepublication review by the CIA, there was also reason to believe that plaintiff had made public statements concerning the CIA's activities without approval, that he repeated his previously-voiced intention to engage in a campaign against the CIA, and that he enjoyed the favor of governments hostile to the United States. In these circumstances, it was entirely rational for the Department to conclude that plaintiff's circumstances had not changed and, consequently, that he was not entitled to a reissued passport.[13]

## III. The Department's Regulations Were Properly Applied

### A. The Cross-Examination Offered Was Fully Consistent With Department Regulations

As defendant established in his opening memorandum, plaintiff was offered the opportunity to submit cross-examination on written interrogatories. Such a process is contemplated by the regulations. 22 C.F.R. § 51.85. Perhaps even more significantly, the decision of the Board of Review expressly contemplated cross-examination on written interrogatories. Board

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[13] Plaintiff argues that Item 10, a series of articles based on interviews with plaintiff in a Danish newspaper, is objectionable because they contain only one isolated reference to the identity of a CIA employee and that reference is not attributed to plaintiff. Pl. Brief at p. 44. This argument ignores the articles, in which plaintiff purports to discuss ongoing CIA operations in the European peace movement, details alleged CIA manipulation of the news media, and discusses alleged CIA activities in Latin America.

Decision at 14.[14] Plaintiff's response is not the citation of contrary authority but the complaint that written interrogatories would be less effective than personal examination. Such argument is directed to the wisdom of the regulations, not whether they have been violated.[15]

### B. The Procedures Upon Remand Complied With The Board's Ruling

Once again ignoring the history of this case, plaintiff argues that the Board of Appellate Review required the Department to reopen the hearing to allow plaintiff the opportunity for in-person cross-examination. This argument is specious.

The Board did not require that the hearing be reopened but only that the Department "turn the allegations of the twelve citations ... into evidentiary proof in accordance with the provisions of the Department's own rules of procedure in such cases. Def. App., Tab O, pp. 14-15. This did not require rehearing or live testimony. Indeed, as noted above, the Board

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[14] As noted supra, the Board's interpretation of the Department's regulations is entitled to substantial deference here.

[15] Plaintiff's claim that the Department violated 22 C.F.R. § 51.85 by not providing him with all the information before the hearing officer and the source of the evidence is decidedly false. Plaintiff received all information before the hearing officer and was informed that the CIA was the source. To the extent that plaintiff's argument is that he was not provided specific information on the CIA's sources, we note that plaintiff failed even to attempt to elicit this information by exercising his right to pose interrogatories on precisely this point following the remand.

expressly authorized the taking of testimony by deposition on written interrogatories.

Even more telling, however, is that the Board itself has already rejected plaintiff's claim that the terms of the remand were violated. In responding to plaintiff's attempt to appeal this same issue to the Board, plaintiff was informed by the Board's Chairman that the Department was required only to take "further action to develop an adequate record" and that plaintiff's interpretation of the terms of the remand was simply "inaccurate." Def. App. Tab U.

C. Plaintiff Received A Timely Hearing

As we noted in our opening brief, plaintiff's counsel sought to initiate the 60 day period for commencement of a hearing, contained in 22 C.F.R. § 51.81 by prematurely requesting a hearing before the adverse action at issue was even reached. Def. Opening Brief at 54-55.[16] Plaintiff's April 30, 1987 letter did not request a hearing on the initial denial of the application, but requested a hearing in the event an adverse action was reached after review of the materials submitted with the April 30 letter. Plaintiff's argument simply ignores this issue.

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[16] As also noted previously, this is the only claim brought by plaintiff which, if ultimately proven well founded, would entitle plaintiff to an order that defendant may not deny a passport to plaintiff. 22 C.F.R. § 51.81. The other claims, at best, would result in a remand.

## IV. Plaintiff Was Not Denied Any Constitutional Right To Cross-Examination[17]

As discussed above, plaintiff was given a full opportunity to submit any cross-examination questions he considered appropriate in the form of written interrogatories, as contemplated by the remand by the Board of Appellate Review and as authorized by Department regulations. He, however, refused to exercise that right and insists on in-person cross-examination, stating only that written interrogatories "are not meaningful." Pl. Brief at 59. Thus, it is completely inaccurate for plaintiff to argue, as he does at p. 58 of his brief, that he was denied the opportunity to test the reliability or credibility of the CIA's information or to explore for possible biases. He simply was not afforded it in the form he favored.

Plaintiff's burden, under the test of Mathews v. Eldridge, 424 U.S. 319 (1976) is not just to show the benefits of cross-examination in general, but the specific necessity for in-person cross-examination of CIA Director Webster and CIA employee Lee Carle, the only witnesses for which plaintiff requested cross-examination below.[18] Apart from general observations concerning the value of cross-examination, plaintiff completely fails even to attempt to carry this burden.

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[17] As we noted in our opening brief, plaintiff has no Sixth Amendment right to cross-examination in this civil proceeding. Def. Opening Brief at p. 14, n.8. While plaintiff continues to assert such a right in his motion, he nowhere responds to the unassailable point that the Sixth Amendment in inapplicable here.

[18] Defendant's Appendix, Tab Q.

The reasons for this failure, and the complete lack of a need for additional procedural steps here, becomes plain upon review of the twelve specified items in Director Webster's June 3, 1987 letter. Of the twelve items, the Department concedes that plaintiff proved prepublication review for one. Of the remaining eleven items, eight consist solely of press reports or public statements attributed to plaintiff which indicated that plaintiff had continued to engage in activities which may be in violation of his secrecy agreement. The Department of State verified the genuineness of certain of these by independently obtaining copies and providing them to plaintiff. Neither defendant, Director Webster, or Mr. Carle have first hand knowledge of whether the statements are true or correctly attributed to plaintiff. Nowhere does plaintiff articulate any valid reason for insisting on in-person cross-examination on these items. No testing of credibility or bias of the CIA or the State Department is even relevant.[19] Both agencies simply recounted press reports of plaintiff's statements.

Of the remaining three items, plaintiff has admitted in this Court that he obtained passports from the former governments of

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[19] In the administrative hearing, plaintiff's counsel suggested that the CIA's information was fabricated. See, e.g., Def. App., Tab K, p. 76 ("Maybe [the CIA was] trying to pull the wool over your eyes. Maybe they made a conscious effort to distort and manufacture and fabricate information thinking we wouldn't realize the source of this."). Plaintiff has not repeated that baseless claim here and, in any event, the State Department's efforts to verify independently the public sources involved dispels this notion.

Grenada and Nicaragua. Thus, this point is not at issue, although the parties remain free to debate its significance.

As to the remaining two items, involving training of Nicaraguan and Grenadan officials in the detection of United States intelligence personnel, plaintiff fails to make any showing that the cross-examination offered was insufficient. Indeed, having failed even to explore that alternative, plaintiff can only speculate as to its lack of efficacy.

## V. Plaintiff's Claim Under 18 U.S.C. § 3504 Is Without Merit

Plaintiff's final claim is that the denial of the use of any illegal electronic surveillance provided to him was insufficient. His arguments lack substance and must be denied.

Plaintiff first claims that the Carle Declaration, which addressed this point, was untimely because it did not precede the hearing. The affidavit, however, need not precede the hearing in question. United States v. Doe, 451 F.2d 466 (1st Cir. 1971) (affidavit accepted on appeal); Korman v. United States, 486 F.2d 926 (1st Cir. 1973) (accord). The affidavit was supplied on the Board's remand and well within the time for plaintiff to have acted below.[20]

Plaintiff miscites In re Quinn, 525 F.2d 222 (1st Cir. 1975), in arguing that a denial affidavit must encompass every

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[20] In any event, mere delay on this issue did not prejudice plaintiff and, even if a violation, is harmless error. Further, plaintiff acknowledges that his prevailing on his § 3504 claim would lead only to a remand, not the issuance of a passport. Remand in this case, where the Department has submitted a sworn denial within the terms of § 3504, would be pointless.

agency with the capability of conducting electronic surveillance. Quinn holds that the affidavit is sufficient if confined to the specific agency sources involved. 525 F.2d at 226. The Carle Declaration meets this test.

Nor is personal knowledge of the declarant required, contrary to plaintiff's arguments. Rather, personal knowledge or information learned upon inquiry is sufficient. In re Grand Jury, 799 F.2d 1321, 1325 (9th Cir. 1986), citing In re Quinn, 525 F.2d at 225.[21]

## Conclusion

Plaintiff's motion is filled with rhetoric on constitutional liberties and devoid of references to history. Plaintiff does not stand before the Court as an ordinary citizen, but as one already lawfully adjudged to have no right to an American passport. Despite his wide-ranging technical arguments, plaintiff has put forth no argument that would justify a decision by this Court overturning defendant's decision. Plaintiff's motion for summary judgment should be denied and defendant's summary judgment motion granted.

Respectfully submitted,

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[21] Plaintiff's final argument, that the Carle Declaration is ambiguous, is specious. The only fair reading of the declaration is that it denies the use of illegal electronic surveillance.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served this 10th day of October, 1990 by placing them in the United States mail, postage prepaid, addressed to:

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