IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No. CO/4241/2008

BETWEEN

THE QUEEN
on the application of

BINYAM MOHAMED

Claimant

and

THE SECRETARY OF STATE FOR
FOREIGN AND COMMONWEALTH AFFAIRS

Defendant

THIRD CERTIFICATE OF THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

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1. I am Her Majesty's principal Secretary of State for Foreign & Commonwealth Affairs and the Defendant in these proceedings. I make this, my third, public interest immunity Certificate in these proceedings following two earlier Certificates from me on 26 August and 5 September 2008. This Certificate addresses (A) the reasons, based on the national security and international relations interests of the United Kingdom, for my continued assessment that the 7 paragraphs redacted from the Court's 1st open Judgment of 21 August 2008 ("the 7 paragraphs") should not be publicly disclosed; and (B) my reasons, based on the same considerations, for opposing disclosure of classified correspondence from the US Administration dated 30 April 2009, filed with the Court on 1 May 2009 ("the US correspondence").

2. In this Certificate, relevant to the question of disclosure of the 7 paragraphs, I address whether there is a real risk of serious harm to the national security and international relations of the United Kingdom if public disclosure is ordered by the Court. I also address the abhorrence of torture and cruel, inhuman and degrading treatment and punishment, which was the subject of extensive review in my second Certificate, and the needs of open justice as safeguarding the rule of law, free speech and democratic accountability. Finally, I set out where, in my judgement, the balance should lie between the relevant public interests.

3. Relevant to the question of the disclosure of the US correspondence, I address whether there is a real risk of serious harm to the national security and international relations of the

United Kingdom were the Court to order further disclosures from this classified text. I also address the needs of the Claimant and the third parties involved in these proceedings to have access to the same documentary material as that provided to the Court, as well as the wider public interest in open justice. Finally, I set out where, in my judgement, the balance lies between the relevant public interests.

4. In undertaking these assessments, I understand and fully accept that the threshold of whether there is a real risk of serious harm to the national security and international relations interests of the United Kingdom is high. I also understand and fully accept that, on the question of the balance between the relevant public interests, the presumption is in favour of open justice. By way of summary of my conclusions, on the public disclosure of the 7 paragraphs, my assessment of the risk of serious harm to the national security and international relations interests of the United Kingdom that would be caused by public disclosure, and on where the balance lies between these public interests and the public interest of open justice, remains as set out in my earlier Certificates. Indeed, for the reasons set out in this Certificate, my view is that the balance of the countervailing public interests in issue in these proceedings has shifted further in favour of the non-disclosure of the 7 paragraphs by action or order of the United Kingdom, including of our courts. On the disclosure of the US correspondence, my assessment is that disclosure of the letter into open in its full classified form would cause serious harm to the national security and international relations interests of the United Kingdom and that these public interests outweigh the public interest in the open disclosure of this document.

5. In making this Certificate, I note that the United Kingdom worked hard to ensure that the information that has been in issue in these proceedings, of which the 7 paragraphs are in part a summary, was disclosed to Mr Mohamed's US counsel through US processes. I note also that the United Kingdom has disclosed, very largely in open form, its own documentation in issue in this case. The United Kingdom has thus, throughout this case, made considerable efforts in favour of open justice. It also secured the release of Mr Mohamed from Guantanamo Bay and his return to the United Kingdom, free from any charge, in the defence of which Mr Mohamed first sought the disclosure of the information in issue in these proceedings. In considerable measure, the administration of justice has thus been served by the efforts of the United Kingdom. Further issues associated with Mr Mohamed's allegations of mistreatment remain to be addressed through other procedures of open justice, rule of law and democratic accountability. These include a civil damages claim that Mr Mohamed has brought against the UK Government and, separately, the criminal investigation that is proceeding following the reference of allegations of criminal wrong-doing arising out of this case to the Attorney General, and subsequently, by the Attorney, to the police for further investigation.

6. Appended to this Certificate is a sensitive Schedule to which I will make further reference below. This Schedule addresses the issue of the disclosure both of the 7 paragraphs and of the US correspondence.

7. In making this Certificate I have been advised as to and have directed myself in accordance with the tests which apply to PII claims, as set out in paragraph 34 of the Court's 4th Judgment. I do not repeat these tests in this Certificate.

8. By virtue of my office, I am responsible for assessing the public interests in protecting the national security and international relations of the United Kingdom. I am also required to assess the balance of these public interests against the countervailing public interests in open justice and in properly reflecting our abhorrence of torture and cruel, inhuman and degrading treatment and punishment. The final judgement as to where the balance lies is a matter for the Court.

9. For the purposes of this Certificate, I have reviewed the documents I considered for purposes of my earlier Certificates. I have also reviewed the additional documents submitted to the Court, including letters from the Treasury Solicitor of 9 and 17 April 2009. I have, further, reviewed afresh the 7 paragraphs, as well as the underlying US intelligence documentation of which the 7 paragraphs are in material part a summary produced by the Court. I have also read carefully the Court's 4th Judgment and considered the US correspondence to which I will refer further below. I have also had careful regard to the advice I have received from my officials and to the detailed and considered assessment of those in the intelligence and security agencies in relation to the national security and international relations issues that arise.

(A) The 7 Paragraphs

Summary of conclusions

10. By way of summary, I state at the outset that, while there have been various developments since my last Certificate, and, more particularly, since the assumption of Office of President Barack Obama in the United States on 20 January 2009, that may be regarded as having a bearing on this case, my assessment of the risk to UK national security and international relations and where the balance lies between countervailing public interests, remains as set out in my earlier Certificates. Indeed, for reasons set out below, my view is that the balance of the countervailing public interests in issue in these proceedings has shifted further in favour of non-disclosure of the 7 paragraphs by action or order of the United Kingdom, including of our courts. This is not to downplay the importance that attaches to the abhorrence of torture and cruel, inhuman and degrading treatment and the countervailing

public interests addressed in the Court's 4th Judgment and described, in paragraph 107 of that Judgment, in terms of open justice as safeguarding the rule of law, free speech and democratic accountability (addressed below, in shorthand, as "open justice"). These are important standards of our democracy and matters to which I give substantial weight. For all of their substantial weight, however, they are not the only public interests that must be considered.

11. In making this Certificate, I am aware of the wider interest in this case and the broader issues to which it gives rise. The case has generated significant parliamentary, press and wider public debate. I have been criticised for the conclusions that I have reached on the question of disclosure. It is said that the invocation of national security is designed to hide from scrutiny the conduct of our Government and our personnel, as well as conduct of the United States. It is also said that to assert national security against disclosure in this case is simply to do the bidding of the United States. These criticisms are completely without foundation. To accept them as a basis of disclosure would be to ignore the realities of the issues that need to be weighed in the balance. My assessment, in my earlier Certificates and in this one, is driven neither by a wish to shield from the light issues of wrongdoing or embarrassment nor by an inclination towards easy answers. It is what is required to safeguard the national security and international relations interests of the United Kingdom. As I address further below, there are indeed proper and weighty imperatives of open justice that require consideration. However, in the balance, it is my judgement that these imperatives of open justice are capable of being addressed in this case in other ways which do not pose the same risk of serious harm to the national security and international relations of the United Kingdom as would the public disclosure of the information in issue before the Court.

12. I have also had regard to the fact that the Claimant has stated that the position on public disclosure taken by the previous US Administration was aimed at avoiding damaging or embarrassing disclosures about its conduct. The new Administration in Washington is not associated with the events in issue in these proceedings. It has also been prepared to disclose sensitive information when it has considered such disclosures to be warranted. Against this background, the position taken by the new Administration to the public disclosure of the 7 paragraphs and other information in issue in our proceedings is all the more noteworthy.

The Claimant's application to re-open the 4th Judgment

13. I am advised that the Claimant applied to re-open the 4th Judgment on two grounds going to the factual predicates on which the Judgment was based. First, I am advised that the Claimant contended that statements made by me and by others following the 4th Judgment on the subject of whether the United States had "threatened" the United Kingdom called into

question one of the factual bases for the Judgment. Second, I am advised that the Claimant contended that, following President Obama's election, the position of the US Government on questions of disclosure of information of the type in the 7 paragraphs (including the consequences for the UK if there was public disclosure by the UK Courts) may have or had changed. I am advised that, in response to the Claimant's application, the Court has decided to re-open its Judgment. While this Certificate addresses issues raised by the application to re-open and related developments, as the Court has not yet stated its reasons for re-opening, I am not in a position to address the specific concerns of the Court directly.

The "threat" issue

14. In its 4th Judgment the Court chose to characterise the US Government's position as to the consequences which would flow from public disclosure of the 7 paragraphs as a "threat." It was a matter for the Court to describe the position as it saw fit, in language of its own, based on the evidence before it, including evidence in the sensitive Schedule appended to my first Certificate. Taking into account that same evidence, I did not at the time of my earlier Certificates, and still do not, describe the US communications as a threat. The consequences that would flow from the public disclosure of the 7 paragraphs reflect the reality of intelligence liaison.

15. My understanding is that the Court in its 4th Judgment fully appreciated the basis upon which intelligence information is shared and the consequences for such future sharing if confidentiality is violated. In this regard, I refer in particular to paragraph 74 of the Court's 4th Judgment where it concluded:

> "It is self evident that liaison with foreign intelligence services, including the provision of information or access to detainees held by foreign governments, lies at the heart of the protection of the national security of the United Kingdom at the present time, particularly in the prevention of terrorist attacks in the United Kingdom. If the value of information is to be properly assessed by the United Kingdom intelligence services, it is also essential the intelligence services know the circumstances and means by which it was obtained. There is powerful evidence that intelligence is shared on the basis of reciprocal understanding that the confidence in and control over it will always be retained by the State that provides it. It is a fundamental part of that trust and confidentiality which lies at the heart of the relationship with foreign intelligence agencies. This is particularly the case in relation to the United States where shared intelligence has been developed over 60 years. Without a clear understanding that such confidence will not be breached, intelligence from the United States and other foreign governments so important to national security might not be provided. The public of the United Kingdom would be put at

risk. The consequences of a reconsideration of and a potential reduction in the information supplied by the United States under the shared intelligence relationship at this time would be grave indeed."

16. This assessment was based on an appreciation of the fundamental requirement of confidentiality that is at the heart of the UK's liaison relationship with the US intelligence agencies and with intelligence agencies of other countries, also described in my earlier Certificates and in particular in the sensitive Schedule attached to my first Certificate.

The position of the Obama Administration

17. My understanding has throughout been that the change in the US Administration on 20 January 2009 did not alter in any way the fundamental objection of the United States to the public disclosure of its intelligence material, or of information derived from that material, by the United Kingdom (including by our courts), nor of the consequences for intelligence liaison with the UK, were there to be such disclosure. That remains my understanding, as I describe in more detail below. The position of the United States on public disclosure is of course critically important as, if the US did not object to the disclosure of its information, the UK would have no objection, as we have repeatedly made clear. The US position being what it is, however, the considerations central to my assessment of these issues are the principles of trust and confidence that are at the heart of intelligence liaison, the reliability of the United Kingdom as an intelligence liaison partner, and the consequences for the national security and international relations of the United Kingdom if that trust and confidence were to fracture and that reliability were to be called into question.

Fresh consideration of PII issues

18. In the light of the Court's decision to re-open its 4th Judgment and the submissions which I understand have been made to the Court, including the suggestion that the Obama Administration takes a different view to the Bush Administration on public disclosure of the 7 paragraphs and as to the consequences which may flow from such disclosure, I have undertaken a fresh consideration of the public interest immunity issues.

19. The Court indicated in paragraph 18 of its 4th Judgment that it considered that the issues in the present case required a balance between the competing public interests in national security and in open justice, the rule of law and democratic accountability. I will first address whether disclosure of the information in question will bring about a real risk of serious harm to the national security and/or international relations interests of the United Kingdom; and, second, the balance between the public interests in national security and international relations against the countervailing public interests.

The United Kingdom's national security and international relations interests

20. In my second Certificate, I expressed my judgement on the national security and international relations interests of the United Kingdom in the following terms (at paragraph 48):

> "[I]t is my judgement that there is a likelihood of real damage to the national security and international relations interests of the United Kingdom in the event of any Court ordered disclosure of the classified information in issue into the public domain by the movement of the material from the closed judgment of 21 August 2008 into open form. The reasons for this assessment correspond to those set out and referred to in paragraphs 29-35 above."

21. Paragraphs 29-35 of my second Certificate in turn referred to the assessment of the issues given in my first Certificate. My judgement, across these two Certificates, was that public disclosure of the information now in issue before the Court "would seriously harm the existing intelligence-sharing arrangements between the United Kingdom and the United States and cause considerable damage to the national security of the United Kingdom. I also assessed that disclosure may damage international relations of the United Kingdom more generally and liaison relationships with third parties" (first Certificate, at paragraph 10; second Certificate, at paragraph 34).

22. I have carefully reviewed my assessments and conclusions as expressed in these earlier Certificates taking into account the further advice that I have received. I consider that the judgements expressed therein were then, and remain, correct. It is my continued view that real harm to the national security and the international relations interests of the United Kingdom would be caused were there to be public disclosure of the 7 paragraphs in issue in these proceedings. The critical issue is the principle of trust and the fundamental requirement of confidentiality that lies at the heart of intelligence liaison relationships. This aspect is addressed in greater detail in the sensitive Schedule attached to this Certificate. I have weighed the advice provided to me by my officials and by those of other Government departments and agencies concerned with this matter. I emphasise, however, that this conclusion reflects my judgement of the issues, informed by a familiarity with and considered appreciation for the work and expertise of our intelligence and security agencies.

23. Although in this case, the correspondence with the US Administration has been given prominence, in coming to my conclusion I began by paying regard to the long established practice within intelligence communities that information passed on intelligence channels cannot be publicly disclosed without the consent of the State providing it. This custom is of

fundamental importance to the intelligence relationships maintained by the United Kingdom in protecting its national security. It is a custom which has always to the best of my knowledge, in practice, been respected by UK courts.

24. I am advised that it has been suggested in evidence before the Court that because the US Government is aware that the disclosure decision is to be made by an independent court, no harm would in fact result if the Court decided to exercise its power to disclose. I do not accept this view. Although, in a case such as this one, the UK courts have the power, in principle, to disclose information provided by a foreign liaison service, or derived from such information, without the consent of the provider (and even against its expressed will), it would be extraordinary to do so. If the Court was to disclose the 7 paragraphs in the current circumstances, that would cause a loss of confidence in the United Kingdom's ability to comply with this custom (not only by the United States but also by other foreign governments), which would cause considerable damage to our national security. It would not be a question of the United States merely "taking umbrage", as it has been described to the Court, but of the United States and other foreign governments re-evaluating the extent to which they believe they can safely provide the UK with information in light of what would be a highly significant breach by the UK of the control principle. A failure of the UK legal system to respect and protect information disclosed in an intelligence relationship will have serious consequences for intelligence liaison.

25. I have also had regard to the position of the US Administration as set out in open and closed materials before the Court. After the release on 16 April 2009 of four previously highly classified Department of Justice memoranda concerning interrogation practices, and the Court hearing on 22 April 2009, the FCO Legal Adviser, Daniel Bethlehem QC, sought clarification of the Administration's position in respect of the 7 paragraphs and underlying US intelligence information in issue in this case. In doing so, I am advised that Mr Bethlehem did not seek clarification of the Administration's position in any particular form but only an authoritative statement of the position of the Administration in a manner that could be conveyed to the Court and the parties as fully as possible in open form. I understand that this request for clarification was intended to be responsive to the Claimant's and the Court's concerns to know definitively and authoritatively the precise position of the new US Administration to the disclosure issues before the Court. The US correspondence dated 30 April 2009, the content of which was not known by UK officials until its receipt on 1 May 2009, was the US response to these enquiries. Although in the open version of that correspondence details of the sender and addressee of the letter have been redacted, I am clear beyond doubt that the letter authoritatively reflects the views of the Obama Administration as a whole.

26. The US correspondence accords with the position of the Administration communicated to me in more general terms by US Secretary of State Clinton on 2 March 2009 in my discussions with her, as indicated in paragraph 14 of Mr Bethlehem's correspondence to the Court of 24 March 2009. She was clear then that the position of the new US Administration on the disclosure of US intelligence material had not changed, indicating that it was an inviolable principle that one State should not disclose publicly the intelligence information shared with it by a liaison partner.

27. Since receipt of the US correspondence on 1 May 2009, this matter also arose for discussion when I met Secretary of State Clinton in Washington on 12 May 2009. She was fully aware of the issues and reiterated that the US position on public disclosure in this case had not changed with the change in Administration, the protection of intelligence going beyond party or politics. She indicated that the US remained opposed to the public disclosure of US intelligence information in this case. The US Secretary of State indicated further that public disclosure in this case would affect intelligence sharing and would cause damage to the national security of both the US and UK. Comment by those representing the National Security Council at the same meeting made it clear, if further clarification were needed, that this was also the position of the White House.

28. While it is appropriate in the case of our closest ally and intelligence partner, to give the US correspondence and other statements weight and careful consideration, I emphasise that the views expressed by the United States are not dispositive of the United Kingdom's national security or international relations interests. Nor are they dispositive of the United Kingdom's wider public interest, including as regards the balance of the public interests in national security and international relations as against the countervailing public interests. Accordingly, while I have weighed carefully the position of the United States, my judgement has turned on my appreciation of the national security and international relations interests, and of the countervailing public interests, of the United Kingdom, not on the interests of the United States.

29. I have carefully considered, together with those advising me, whether the recent US correspondence indicates a different approach to that indicated in the earlier US correspondence which was before the Court when it delivered its 4th Judgment. It is my view, and that of my advisers, that there is no difference in substance between the earlier and recent correspondence. The open version of the recent correspondence reiterates that "[t]he cooperation and sharing of intelligence between the United Kingdom and the United States, as well as with other foreign governments, exists under strict conditions of secrecy. Public disclosure by the United Kingdom of information garnered from such relationships would suggest that the United Kingdom is unwilling or unable to protect information or assistance provided by its allies." This issue was central to my earlier assessment. I note, for example,

the observations at paragraphs 31 and 32 of my second Certificate, including "the absolutely essential issue of the confidence that other governments, including notably the US Government, can have when they share intelligence information with us" (at paragraph 32). In this regard, it is incumbent upon me to weigh with the utmost care the statement in the concluding paragraph of the US correspondence: "If it is determined that HMG is unable to protect the information we provide to it, even if this is a result of a decision of its courts, we will necessarily have to review with the greatest care the sensitivity of information we can provide in future". This issue is addressed further below and in the sensitive Schedule attached to this Certificate.

Balancing the public interests in national security and international relations against the public interest in open justice

30. For purposes of assessing where, in my judgement, the balance lies between the public interests of national security and international relations and the public interest in open justice, I have taken into account the factors that the Court identified in paragraph 18 of its 4th Judgment. I have also had closely in mind the abhorrence of torture and cruel, inhuman and degrading treatment and punishment and the importance of reflecting that appreciation publicly, issues addressed in detail in paragraphs 15-21 of my second Certificate. In addition, I have taken into account various factual developments since my earlier Certificates, including:

(a) Mr Mohamed was released from Guantanamo Bay and returned to the United Kingdom on 23 February 2009;

(b) Mr Mohamed is able to speak, and has spoken publicly, about the treatment that he alleges he suffered while in detention by foreign governments;

(c) Mr Mohamed has brought proceedings against the UK Government in a civil damages claim;

(d) potentially relevant documents have been disclosed to Mr Mohamed's security cleared Counsel in redacted form in *habeas* proceedings in the United States;

(e) in the United Kingdom, there has been considerable speculation and media attention about the content of the 7 paragraphs and the underlying intelligence material;

(f) allegations of criminal wrongdoing arising out of this case were referred to the Attorney General in her role as an independent Minister of Justice. Having consulted

the Director of Public Prosecutions, the Attorney General referred the matter to the police for investigation. That investigation is proceeding;

(g) papers relating to Mr Mohamed (and in particular the closed documents at issue in this case, the closed judgment and the open and closed transcript of Witness B's evidence) have been provided to the ISC, which has already undertaken inquiries into the matter as described in the ISC's press notice of 17 March 2009;

(h) the Prime Minister issued a Written Ministerial Statement on Detainees on 18 March in which he set out a range of further work to provide reassurance that everything has been done to ensure that our practices are in line with United Kingdom and international law;

(i) there have been various developments in the United States, including:

- the Executive Orders issued by President Obama on 22 January 2009 relating to the closure of Guantanamo Bay and reviews of detention and interrogation policies;
- the release on 16 April 2009 of four Department of Justice memoranda on interrogation practices;
- on-going *habeas* proceedings in Mr Mohamed's name before the US federal courts;
- a judgment of the 9th Circuit Court of Appeal in a case brought by Binyam Mohamed and others against Jeppesen Dataplan Inc rejecting a state secrets claim by the Administration. I am advised that the US Government is considering whether to file an appeal in this case;
- the US Senate Armed Services Committee has recently published in unclassified form a detailed *Inquiry into the Treatment of Detainees in U.S. Custody* dated, in its classified version, 20 November 2008;
- on 5 March 2009, the US Senate Select Committee on Intelligence announced "on a strong bipartisan basis to begin a review of the CIA's detention and interrogation program", including how the CIA created, operated and maintained its detention and interrogation programme.

31. In considering these and other factors to which I make reference below, I have had regard to the Court's observation, in paragraph 102 of its 4th Judgment, as follows:

"We have already expressed at paragraph 54 our clear view that the requirements of open justice, the rule of law, free speech and democratic accountability demonstrate the very considerable interests in making the redacted paragraphs public. However,

> although the open conduct of justice is under our constitution one means of achieving these purposes, our constitution provides other means by which the rule of law, free speech and democratic accountability can be safeguarded given what has already been placed into the public domain and what has resulted in consequence of these proceedings to date."

32. I note also the Court's review and conclusions in the paragraphs subsequent to this extract which address the engagement of the Intelligence and Security Committee and the reference to the Attorney General, which led subsequently to a reference of the matters in question by the Attorney to the police for further investigation.

33. While certain of the factors identified in paragraph 30 above may lean towards public disclosure of the 7 paragraphs as an element of the "open conduct of justice" to which the Court referred in paragraph 102 of its 4th Judgment, these developments also point to wider mechanisms and processes of democratic accountability, free speech and the rule of law. While, if the Court accepts my judgement, the 7 paragraphs will not be disclosed, the broader open justice objective which is sought through their disclosure will largely be addressed, both as to the specifics of Mr Mohamed's case and allegations and in terms of the rule of law and democratic accountability more broadly.

34. I am also advised, and note, that, in a manner that would be fully consistent with the principle of control over intelligence material, it is open both to Mr Mohamed and to others who have an interest in these matters, to pursue the disclosure of the US intelligence information underlying the 7 paragraphs through US processes. Specifically, I am advised that (a) the protective order pursuant to which the underlying intelligence documentation was disclosed to Mr Mohamed's US counsel allows those counsel to submit a request to the US Government for the declassification of the documents disclosed to them, (b) any person with an interest in the matter may request the disclosure of the underlying intelligence material under the US Freedom of Information Act and may, if necessary, pursue such request through judicial review proceedings to challenge any refusal by the US Government to disclose the information, and (c) may seek to persuade the US Senate Select Committee on Intelligence to make specific recommendations on the disclosure of intelligence documentation in the course of its inquiry announced on 5 March 2009.

35. I have set out above my judgement on the national security and international relations of the United Kingdom. On the question of the balance between these public interests and the countervailing public interests in disclosure, I have also had regard to the other means, addressed by the Court in paragraphs 102 – 105 of its 4th Judgment, by which the rule of law, free speech and democratic accountability can be safeguarded. I have also considered other developments and factors noted above that favour, on the one hand, public disclosure and, on

the other hand, that point to other processes and mechanisms by which the rule of law, free speech and democratic accountability may be safeguarded. Considering all of these elements, my judgement continues to be very firmly that the balance of the public interests remains against the public disclosure of the 7 paragraphs.

36. As the Court stated in the concluding sentence of its 4th Judgment, it is now a matter for the United States to consider whether, and, if so, when and in what form, it should make the information in question public.

(B) US correspondence

37. An open and quite full version of the classified US correspondence dated 30 April 2009 has been provided to the other parties in these proceedings. This text was produced and provided by the US Administration for public disclosure. Following disclosure, it has already been quoted extensively in the media.

38. In part of the sensitive Schedule attached to this Certificate, I have set out my reasons for concluding that there would be serious harm to the existing intelligence sharing arrangements, and therefore real damage to the national security and international relations interests of the United Kingdom, in the event of further disclosure of this classified US correspondence.

39. I fully accept that in normal circumstances the Claimant and the third parties involved in these proceedings would have access to the same documentary material as that provided to the Court. There is an important public interest in seeking to achieve this if possible and also in ensuring, as part of the principle of open justice that the public see or have access to documents relied upon in legal proceedings. However, balancing these important interests against the national security and international relations interests of the UK, to which I refer in the sensitive Schedule, has led me to conclude that disclosure of the full text of the classified letter would not be in the public interest. In arriving at this assessment, I have had particular regard to the fact that Special Advocates have been appointed to represent the Claimant in closed sessions and that they have been provided with full and unredacted versions of the documents. Disclosure to the Special Advocates is consistent with the approach adopted in these proceedings in relation to earlier classified US correspondence and I understand that they have forcefully advanced the Claimant's interests in the closed proceedings by reference to the contents of closed documents.

Conclusion

40. In putting this further PII Certificate to the Court, I accept that the Court has final responsibility for determining questions of disclosure and in particular for deciding where the balance of public interests lies.

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The Right Honourable David Miliband MP
Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs

Dated the 15th day of May 2009