

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PROJECT ON GOVERNMENT OVERSIGHT)
666 11th Street, N.W., Suite 500)
Washington, DC 20001)

Plaintiff,)

v.)

Civil Action No. _____

JOHN ASHCROFT, in his official capacity)
as Attorney General of the United States,)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530)

and)

UNITED STATES DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530)

Defendants.)

_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action by the Project On Government Oversight (POGO), a politically independent non-profit government watchdog, to challenge the reclassification by defendants John Ashcroft and the Department of Justice of certain information that is widely available to the public. POGO seeks a declaration that defendants' reclassification of the information at issue was unlawful because defendants failed to comply with the requirements of Executive Order 12958, as amended by Executive Order 13292, and unconstitutional because it is a prior restraint that violates the First Amendment.

2. The information at issue relates to allegations made by Sibel Edmonds, a former FBI translator who reported numerous instances of corruption, incompetence, and cover-ups in the translation unit where she worked. The FBI hired Ms. Edmonds as a contract linguist after the terrorist attacks of September 11, 2001, but terminated Ms. Edmonds' employment contract after she made her allegations. Ms. Edmonds has brought suit to challenge her termination by the FBI. *Edmonds v. United States Department of Justice*, Civ. No. 02-1448 (D.D.C. filed July 22, 2002).

3. Some of the information Ms. Edmonds seeks to bring to light through her whistleblowing was discussed during two unclassified briefings held between the Senate Judiciary Committee and the FBI during June and July, 2002. Some of that information was discussed in a series of letters from Senators Leahy and Grassley to Justice Department officials. Those letters were posted on the Internet and widely disseminated. However, on May 13, 2004, an e-mail was circulated to the staff of the Senate Judiciary Committee announcing that the FBI considers some of the information from the two Judiciary Committee briefings to be classified, and warning staffers not to disseminate further the information. In the wake of the decision to reclassify the information from the briefings, two letters from Senators Leahy and Grassley were removed from their websites, although they remain available from other Internet sources.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.
5. This Court is authorized to provide declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

PARTIES

6. Plaintiff Project On Government Oversight (POGO) is a public interest organization headquartered in Washington, D.C. Since its founding in 1981, POGO has worked to increase government accountability by conducting investigations of government waste, fraud, and abuse, and by disseminating its findings. POGO publishes a newsletter and distributes reports, both in print and electronic media. POGO has sought to improve transparency in government by working for greater citizen access to government documents and information, and by opposing excessive government secrecy.

7. The defendants are John Ashcroft, the Attorney General of the United States, and the Department of Justice. As Attorney General, Defendant Ashcroft is the head of the Department of Justice and chief law enforcement officer of the Federal Government. Defendant Ashcroft has acknowledged that he is responsible for the decision to reclassify the information at issue in this case. As set forth in more detail below, defendants reclassified the information at issue in violation of Executive Order 12958, as amended by Executive Order 13292, and the First Amendment. On information and belief, defendants reclassified the information at issue to protect the government in civil litigation, including cases brought against the government by the families of those killed in the September 11, 2001 terrorist attacks.

FACTS

8. On June 17 and July 9, 2002, the FBI held unclassified briefings for the staff of the Senate Judiciary Committee. During these unclassified briefings, the FBI discussed information relating to allegations made by Sibel Edmonds, a former contract linguist for the FBI, concerning

problems in the FBI translation unit where she worked. At the time of the briefings, the information discussed was not classified.

9. On June 19, 2002, Senators Patrick Leahy and Charles Grassley sent a letter to Glenn Fine, Inspector General of the Department of Justice, asking that Fine pursue particular matters in the course of his investigation of Ms. Edmonds' claims. The letter of June 19 was disseminated widely and posted on Senator Leahy's and Senator Grassley's websites.
10. On August 13, 2002, Senators Leahy and Grassley sent a letter to Attorney General John Ashcroft regarding the status of the investigation of Ms. Edmonds' claims. The August 13 letter was disseminated widely and posted on Senator Leahy's and Senator Grassley's websites.
11. On October 28, 2002, Senator Grassley sent a letter to Robert Mueller, Director of the FBI, expressing the Senator's concern with the FBI's translation capabilities and referencing the FBI briefing regarding the claims made by Sibel Edmonds. Senator Grassley's October 28 letter was disseminated widely and posted on the Senator's website.
12. On May 13, 2004, the following message was sent by e-mail to the staff of the Senate Judiciary Committee:

The FBI would like to put all Judiciary Committee staffers on notice that it now considers some of the information contained in two Judiciary Committee briefings to be classified. Those briefings occurred on June 17, 2002, and July 9th, 2002, and concerned a woman named Sibel Edmonds, who worked as a translator for the FBI. The decision to treat the information as classified from this point forward relates to civil litigation in which the FBI is seeking to quash certain information. The FBI believes that certain public comments have put the information in a context that gives rise to a need to protect the information. Any staffer who attended those briefings, or who learns about those briefings, should be aware that the FBI now considers the information classified and should therefore avoid further dissemination. If you attended this briefing and took notes, please contact Pat Makanui, Office of Senate Security, at 4-5632. If you have any questions, please call Nick Rossi at (202) 324-7484.

13. Following notice that the information from the briefings of June 17 and July 9, 2002 had been reclassified, Senators Leahy and Grassley removed from their websites the letters of June 19 and August 13, 2002. However, those letters remain accessible to the public at other Internet locations.
14. POGO obtained copies of the letters at issue before they were removed from the Senators' websites. In furtherance of its mission to serve the public interest by promoting government accountability, POGO desires to post, discuss, and disseminate these documents. However, because POGO is aware that the information contained in the documents has been reclassified, POGO has refrained from doing so.
15. During a Senate Judiciary Committee hearing on June 8, 2004, defendant Ashcroft took responsibility for the decision to reclassify the information at issue. Defendant Ashcroft claimed that "the national interests of the United States would be seriously impaired if information provided in one briefing to the Congress were to be made generally available." Defendant Ashcroft acknowledged that the information had been in the public domain without restriction for an extended period of time, but maintained that reclassification was nevertheless appropriate.
16. In reclassifying the information at issue, defendants failed to comply with the requirements of Executive Order 12958, as amended by Executive Order 13292.
17. Section 1.7(c) of the Executive Order 13292 provides:
- Information may be reclassified after declassification and release to the public under proper authority only in accordance with the following conditions:
- (1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;
 - (2) the information may be reasonably recovered; and

(3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

18. Because the information at issue was disseminated widely over the Internet and remains available on a variety of websites, the information is not reasonably recoverable, and defendants' action in reclassifying the information fails to meet the requirement of Section 1.7(c)(2) of the Executive Order.

19. On information and belief, defendants' reclassification of the information at issue was not reported promptly to the Director of the Information Security Oversight Office, and defendants' action in reclassifying the information fails to meet the requirement of Section 1.7(c)(3) of the Executive Order.

20. On information and belief, defendants reclassified the information at issue to gain an advantage in civil litigation. By reclassifying the information for an improper purpose, defendants have abused the classification process in violation of Section 1.7(a) of Executive Order 13292.

21. By reclassifying the information at issue, defendants have imposed a prior restraint on POGO's speech. Defendants' reclassification of the documents has stifled public discussion regarding the adequacy of the FBI's translation capabilities and Ms. Edmonds' reports of problems in the translation unit where she worked. These are matters of great public importance. Defendants' actions have abridged POGO's rights under the First Amendment.

22. Defendants' reclassification of the information at issue has put POGO in a position where it must disregard the classification order and response of Congress if it is to rely on the now-classified (but still publicly available) information to question the government's response to the

attacks of September 11, 2001. On information and belief, the government often pursues and investigates organizations thought to have published or otherwise disseminated information that is classified.

CLAIMS FOR RELIEF

23. Defendants failed to comply with the requirements of Executive Order 12958, as amended by Executive Order 13292, and therefore violated the National Security Act and any other statute that purports to authorize defendants to classify information in accordance with the Executive Order. Thus, defendants' reclassification of the information at issue is not in accordance with law and, therefore, violates the Administrative Procedure Act.

24. Defendants' reclassification of the information at issue imposes a prior restraint on the ability of POGO to communicate important, lawful information to the public, in violation of the First Amendment of the Constitution of the United States.

WHEREFORE, Plaintiff requests that this Court:

- A. Declare that defendants' reclassification of the information at issue was unlawful because defendants failed to comply with the requirements of the Executive Order;
- B. Declare that defendants' reclassification of the information at issue constitutes an impermissible prior restraint on POGO's First Amendment right to free expression;
- C. Declare that POGO is free to use the information at issue;
- D. Order defendants to declassify the information at issue;
- E. Award POGO reasonable attorney's fees and costs; and

F. Grant all other appropriate relief.

Dated June 23, 2004

Respectfully submitted,



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