

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIBEL EDMONDS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 02-1448 (RBW)
)	
UNITED STATES DEPARTMENT)	
OF JUSTICE, <u>et al.</u> ,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on the defendants' motion to dismiss the plaintiff's complaint ("Defs.' Mot."), in which the Attorney General of the United States has "formally assert[ed] the state secrets privilege to protect certain classified, national security information that goes to the core of the plaintiff's allegations [from being] disclosed." Defs.' Mot., Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss Complaint Based on the State Secrets Privilege ("Defs.' Mem.") at 1. The Court, having conducted an in camera inspection of classified declarations submitted by the government, is nonetheless mindful of the District of Columbia Circuit's observation in Ellsberg v. Mitchell, 709 F.2d 51 (D.C. Cir. 1983), that the state secrets "privilege may not be used to shield any material not strictly necessary to prevent injury to national security; and, whenever possible, sensitive information must be disentangled from nonsensitive information to allow for the release of the latter." Id. at 57 (footnote omitted). Here, the government seeks the "drastic remedy" of the dismissal of the plaintiff's suit, which is grounded on the government's assertion of the state secrets privilege. In

re United States, 872 F.2d 472, 477 (D.C. Cir. 1989) (noting that “[d]ismissal of a suit, and the consequent denial of a forum without giving the plaintiff her day in court . . . is indeed draconian.”). The Court, however, is fully aware that even to a greater extent now,

[i]t requires little reflection to understand that the business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak and dagger affair. Thousands of bits and pieces of seemingly innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate.

Halkin v. Helms, 598 F.2d 1, 8 (D.C. Cir. 1978). Thus, in considering whether dismissal of this case is appropriate in order to protect national security, the Court must assure itself that the plaintiff would be unable to prosecute this case in any manner without the disclosure of privileged information. Accordingly, it is hereby this 3rd day of June, 2004

ORDERED that the government shall produce a declaration articulating its position regarding why “sensitive information [cannot] be disentangled from nonsensitive information” in order to allow the plaintiff to proceed with her claims. The government should focus its response to this Order on why the plaintiff is unable to proceed with her claims and why the government cannot defend against these claims without revealing classified information. The government shall produce this declaration to the Court for its ex parte, in camera inspection by Wednesday, June 9, 2004.

SO ORDERED.

REGGIE B. WALTON
United States District Judge