NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 23 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW, Plaintiff - Appellant, and **LEONARD WEINGLASS, ESQ.,** Plaintiff, v. **NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,** Defendants - Appellees.	No. 11-55754 D.C. No. 2:10-cv-03375-MMM-JC **MEMORANDUM**[*]

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted January 9, 2013
Pasadena, California

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

page 2

Before: **KOZINSKI**, Chief Judge, **McKEOWN** and **M. SMITH**, Circuit Judges.

The district court erred in granting summary judgment without requiring the National Geospatial-Intelligence Agency to submit a classified declaration for in camera review. The government's unclassified declaration failed to provide "reasonably specific detail" that would show why merely acknowledging the existence of records might reveal intelligence sources or methods, or affect our foreign relations. See Berman v. CIA, 501 F.3d 1136, 1140 (9th Cir. 2007); see also 5 U.S.C. § 552(b)(1), (3); 50 U.S.C. § 403–1(i)(1); Exec. Order No. 13,526, §§ 1.1, 1.4(c), (d), 75 Fed. Reg. 707 (Jan. 5, 2010). If this were sufficient to support summary judgment, the government would be free to issue a Glomar response in practically every case involving satellite images and records, as well as many other surveillance activities.

On remand, the agency shall provide a classified declaration for in camera review by the district court, as it offered at oral argument. The court may then reconsider its summary judgment ruling in light of the information so provided.

REVERSED AND REMANDED.