

IN THE _____ COURT FOR THE STATE OF _____

IN AND FOR THE COUNTY OF _____

Plaintiff,

vs.

Defendant.

NO.

**AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS
(State Secrets Privilege & Federal Immunity)**



I, [NAME OF AFFIANT] _____,

being first duly sworn, depose and state as follows:

1. STATUS AND AUTHORITY I am currently serving as a [Rank/Title]

_____ with the _____

[Branch of Service/Agency] _____.

At all times relevant to the charges herein, I was operating under the authority of the United States Government pursuant to Title 10 or Title 32 of the U.S. Code. My duties involved Domestic Deployment operations validated by federal law.

2. ASSERTION OF STATE SECRETS PRIVILEGE

The conduct for which I am currently charged occurred during the execution of official orders. The specific details of these orders, the Rules of Engagement (ROE), and the operational objectives are classified.

- The Reynolds Standard: The United States Supreme Court has established in *United States v. Reynolds*, 345 U.S. 1 (1953), that the government may prevent the disclosure of information if it could reasonably be expected to cause significant harm to national security.
- Privilege Invocation: Disclosure of the specific tactical reasons for my actions would reveal sensitive intelligence sources, methods, or ongoing operations.

3. THE MANDATE OF "NECESSARY FORCE" & NEGLIGENCE

For a Federal Service Member, using force is not just a "right"—it is often a **duty**.

- **Dereliction of Duty (UCMJ Art. 92):** Under the Uniform Code of Military Justice, inaction can be a crime. If you see a threat to the community or your unit and fail to act, you can be charged with **Dereliction of Duty**. The law states that "inaction may make one liable as a party, where there is a duty to act".
- **Negligence for Non-Action:** If using force is *necessary* to prevent death or serious bodily harm, and you **DO NOT** use that force, you are failing your public duty. You could be criminally liable for **negligence** for allowing the harm to occur when you had the means to stop it.
- **Federal Use of Force:** Department of Justice policy affirms that officers may use deadly force when the subject poses an imminent danger of death or serious physical injury. You are trained to neutralize threats; the law expects you to use that training.

4. MOTION TO DISMISS (TOTTON DOCTRINE & DUE PROCESS)

Because the evidence required to explain and justify my actions is classified, it cannot be introduced in open court.

- The Totten Bar: Under the rule established in *Totten v. United States*, 92 U.S. 105 (1876), when the very subject matter of the litigation is a state secret, the action must be dismissed.
- Constitutional Violation: Proceeding with this prosecution without the ability to introduce my exculpatory classified orders would violate my Fifth Amendment right to Due Process and my Sixth Amendment right to a fair trial. I cannot defend myself without revealing state secrets; therefore, the case must be dismissed.

5. STATE-SPECIFIC STATUTORY AUTHORITY (SELF-DEFENSE & STAND YOUR GROUND)

[INSTRUCTIONS TO COUNSEL: Insert your State's specific statutes below. For example, in Washington, cite RCW 10.93.020 (Peace Officer Definition) and RCW 9A.16 (Justifiable Force). In Florida, cite Ch. 776.013. In Michigan, cite MCL 780.972. Use the space below to articulate how these local laws interact with the Defendant's federal status.]

- A. DEFINITION OF PEACE OFFICER / AUTHORIZED AUTHORITY**
B. JUSTIFICATION OF FORCE / STAND YOUR GROUND AUTHORITY
C. DUTY TO ACT / PRECLUSION OF NEGLIGENCE

State Specific Authority context continued on next page:

State Specific Authority:

6. NO WARRANT REQUIRED (FEDERAL & INTERNATIONAL AUTHORITY)

Regarding the specific allegations of search or seizure:

- Federal Authority: As a federal agent operating under specific statutory authorities (e.g., 8 U.S.C. § 1357 regarding border enforcement), I am authorized to conduct search and seizure operations without a warrant in the performance of my duties within operational zones.
 - Supremacy Clause: To the extent that local state law requires a warrant for these actions, federal law preempts state requirements under the Supremacy Clause of the U.S. Constitution (Art. VI, cl. 2) when the agent is executing a valid federal function.
 - Operational Reality: When operating under high-level federal clearances (Confidential, Secret, Top Secret), the traditional constraints of local civilian policing do not apply to mission-essential tasks mandated by the Department of Defense or Department of Homeland Security.

7. CONCLUSION

To avoid the "appearance of impropriety" or the unauthorized disclosure of classified material, and because the "truth" of this matter is protected by the State Secrets Privilege and Federal Immunity, I respectfully request this Court dismiss all charges with prejudice.

8. REFERENCES

Federal Statutes (U.S. Code)

- **10 U.S.C. §§ 251–255:** *The Insurrection Act.* These statutes provide the President with the authority to deploy military forces domestically to suppress insurrection and enforce federal law.
- **8 U.S.C. § 1357:** *Powers of immigration officers and employees.* This statute grants federal agents (specifically within immigration enforcement, often applicable to border security operations) the power to interrogate and arrest without a warrant.
- **Title 10 & Title 32 U.S.C.:** The general statutory frameworks governing the Armed Forces (Title 10 for federal service, Title 32 for National Guard).

Case Law (Supreme Court)

- **United States v. Reynolds, 345 U.S. 1 (1953):** The landmark Supreme Court case establishing the **State Secrets Privilege**, allowing the government to withhold information that would harm national security.
- **Totten v. United States, 92 U.S. 105 (1876):** The Supreme Court decision establishing the rule that lawsuits based on secret contracts or services (espionage/covert operations) must be dismissed entirely to prevent the disclosure of state secrets.

State Statutes (Examples used for Template Instructions)

- **Washington State:**
 - **RCW 10.93.020:** Defines "Limited authority Washington peace officer."
 - **RCW 9A.16:** Outlines defenses, including the justifiable use of force by public officers.
- **Florida:**
 - **Fla. Stat. § 776.013:** The "Stand Your Ground" law, detailing home protection and the use of deadly force.
- **Michigan:**
 - **MCL 780.972:** The "Self-Defense Act," establishing the right to use force without a duty to retreat.

Government Reports

- **Congressional Research Service (CRS) Report R47081: *The State Secrets Privilege: National Security Information in Civil Litigation*** (Shaw, 2022). This report provides the modern interpretation and application of the privilege.
- **U.S. Department of Justice Criminal Resource Manual 1615: *Protection of Foreign Officials—Internationally Protected Persons.*** Used to reference international authority and protections.

FURTHER AFFIANT SAYETH NAUGHT.



[Signature of Affiant] _____

[Rank/Title] _____

[Date] _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____

NOTARY PUBLIC in and for the State of Washington.

Submitted by: _____

Petitioner Respondent Other