Approved:

Assistant United States Attorney

Before:

Douglas F. Eaton

United States Magistrate Judge Southern District of New York

UNITED STATES OF AMERICA

COMPLAINT

BEN-AMI KADISH,

Defendant.

: Violation of 18

U.S.C. §§ 371, 794, &

8 MAG 0881

1001, 1512

: COUNTY OF OFFENSE:

NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

LANCE A. ASHWORTH, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation ("FBI"), and charges as follows:

### COUNT ONE

From at least in or about 1979, through and including in or about 1985, in the Southern District of New York and elsewhere, BEN-AMI KADISH, the defendant, and others known and unknown, unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with each other to communicate, deliver and transmit, directly and indirectly, to a foreign government, faction and party thereof, and to representatives, officers, agents, employees, citizens and subjects thereof, documents, writings and information relating to the national defense, with the intent and reason to believe that they would be used to the injury of the United States and to the advantage of a foreign nation, specifically, the Government of Israel, contrary to Title 18, United States Code, Section 794(a).

### OVERT ACTS

In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others,

were committed in the Southern District of New York and elsewhere:

- a. On numerous occasions from in or about at least 1979 through in or about 1985, a co-conspirator not named as a defendant herein ("CC-1") provided BEN-AMI KADISH, the defendant, with lists of classified documents related to national defense (the "Classified Documents") for KADISH to obtain from the U.S. Army's Armament Research, Development, and Engineering Center at the Picatinny Arsenal in Dover, New Jersey (the "Arsenal").
- b. On numerous occasions from in or about at least 1979 through in or about 1985, KADISH removed the Classified Documents from the Arsenal and took the Classified Documents to his residence in New Jersey (the "Residence").
- c. On numerous occasions from in or about at least 1979 through in or about 1985, CC-1 visited KADISH at the Residence in order to photograph the Classified Documents (the "Visits").
- d. On numerous occasions from in or about at least 1980 through in or about 1985, CC-1 called KADISH from his (CC-1's) residence located in the Riverdale Section of the Bronx in order to arrange the Visits.

(Title 18, United States Code, Section 794(c).)

### COUNT TWO

- 3. From in or about 1979 through and including on or about March 20, 2008, in the Southern District of New York and elsewhere, BEN-AMI KADISH, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to violate Section 951 of Title 18, United States Code.
- 4. It was a part and an object of the conspiracy that BEN-AMI KADISH, the defendant, and others known and unknown, unlawfully, willfully and knowingly would and did act in the United States as agents of a foreign government, specifically, the Government of Israel, without prior notification to the Attorney General, as required by law, in violation of Title 18, United States Code, Section 951.

### OVERT ACTS

- 5. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:
- a. On numerous occasions from in or about at least 1979 through in or about 1985, a co-conspirator not named as a defendant herein ("CC-1") provided BEN-AMI KADISH, the defendant, with lists of classified documents related to national defense (the "Classified Documents") for KADISH to obtain from the U.S. Army's Armament Research, Development, and Engineering Center at the Picatinny Arsenal in Dover, New Jersey (the "Arsenal").
- b. On numerous occasions from in or about at least 1979 through in or about 1985, KADISH removed the Classified Documents from the Arsenal and took the Classified Documents to his residence in New Jersey (the "Residence").
- c. On numerous occasions from in or about at least 1979 through in or about 1985, CC-1 visited KADISH at the Residence in order to photograph the Classified Documents (the "Visits").
- d. On numerous occasions from in or about at least 1980 through in or about 1985, CC-1 called KADISH from his (CC-1's) residence located in the Riverdale Section of the Bronx in order to arrange the Visits.
- e. On numerous occasions from in or about 1985 through on or about March 20, 2008, KADISH engaged in telephone and email conversations with CC-1, and in 2004, KADISH traveled to Israel and met with CC-1. In order to maintain and conceal his status as an agent of the Government of Israel, KADISH did not inform the Attorney General or any other U.S. law enforcement agency about his ongoing contacts with CC-1 and his provision of the Classified Documents to CC-1.
- f. On or about March 20, 2008, CC-1 telephoned KADISH, and CC-1 instructed KADISH to lie to U.S. law enforcement agents.
- g. On or about March 21, 2008, KADISH lied to FBI agents about his recent communications with CC-1.

(Title 18, United States Code, Section 371.)

### COUNT THREE

6. From on or about March 20, 2008 through on or about March 21, 2008, in the Southern District of New York and elsewhere, BEN-AMI KADISH, the defendant, and others known and unknown, unlawfully, wilfully, and knowingly combined, conspired, confederated, and agreed together and with each other to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation, in any matter within the jurisdiction of the executive branch of the Government of the United States, contrary to Title 18, United States Code, Section 1001(a)(2).

### OVERT ACTS

- 7. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:
- a. On or about March 20, 2008, after law enforcement officials (the "Law Enforcement Officials") interviewed BEN-AMI KADISH, the defendant, (the "First Interview"), in connection with a Southern District of New York Federal grand jury investigation into espionage offenses (the "Grand Jury Investigation"), KADISH received a telephone call from a coconspirator not named as a defendant herein ("CC-1"), and CC-1 instructed KADISH to lie to the Law Enforcement Officials.
- b. On or about March 21, 2008, the Law Enforcement Officials interviewed KADISH again in connection with the Grand Jury Investigation, and during this interview, KADISH stated that he (KADISH) did not speak with CC-1 after the First Interview.

(Title 18, United States Code, Sections 371 and 1001(a)(2).)

### COUNT FOUR

8. From on or about March 20, 2008 through on or about April 21, 2008, in the Southern District of New York and elsewhere, BEN-AMI KADISH, the defendant, and a co-conspirator not named as a defendant herein ("CC-1") unlawfully, wilfully, and knowingly combined, conspired, confederated, and agreed together and with each other to engage in misleading conduct toward another person with intent to hinder, delay, and prevent the communication to a law enforcement officer of information relating to the commission and possible commission of a Federal

offense, contrary to Title 18, United States Code, Section 1512(b)(3).

# OVERT ACTS

- 9. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:
- a. On or about March 20, 2008, after law enforcement officials (the "Law Enforcement Officials") interviewed BEN-AMI KADISH, the defendant, (the "First Interview"), in connection with a Southern District of New York Federal grand jury investigation into espionage offenses (the "Grand Jury Investigation"), KADISH received a telephone call from a coconspirator not named as a defendant herein ("CC-1"), and CC-1 instructed KADISH to lie to the Law Enforcement Officials.
- b. On or about March 21, 2008, the Law Enforcement Officials interviewed KADISH again in connection with the Grand Jury Investigation, and during this interview, KADISH stated that he (KADISH) did not speak with CC-1 after the First Interview.

(Title 18, United States Code, Section 1512(k).)

The bases for my knowledge and for the foregoing charges, are, in part, as follows:

- 10. I am a Special Agent of the FBI, and I have been involved in the investigation of the above-described offenses. As set forth more fully below, this Complaint is based, among other things, on my training and experience; my personal participation in this investigation; witness interviews I have conducted; and documents I have reviewed.
- 11. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include details of every aspect of my investigation. Where I relate statements, conversations, and actions of others, those statements, conversations, and actions are related in substance and in part, except where otherwise indicated. Similarly, where I describe documents, the content of the documents is related in substance and in part, except where otherwise indicated.

### BEN-AMI KADISH

12. At all times material to the allegations contained

# in this Complaint:

- a. BEN-AMI KADISH, the defendant, is a United States citizen, who was born in Connecticut. From in or about October 1963 to in or about January 1990, KADISH was employed as a mechanical engineer at the U.S. Army's Armament Research, Development, and Engineering Center at the Picatinny Arsenal in Dover, New Jersey (the "Arsenal").
- b. In his capacity as a mechanical engineer at the Arsenal, KADISH received security clearances in order to have access to classified documents and information. Specifically, KADISH received a "Secret" security clearance on October 22, 1963, and maintained that clearance throughout his term of employment with the Arsenal.
- c. At no time during his employment with the Arsenal was KADISH ever authorized, directly or indirectly, to deliver, communicate, or transmit classified information or documents to representatives, officers, agents, employees, subjects, and citizens of the Government of Israel, faction or party thereof.

### THE CO-CONSPIRATOR

- 13. At all times material to the allegations contained in this Complaint:
- a. A co-conspirator not named as a defendant herein ("CC-1") was born in Israel and is a citizen of Israel.
- b. During at least in or about the late 1970s, CC-1 was employed at the Israeli Aerospace Industries, then known as the Israeli Aircraft Industries, ("IAI"), in Israel. Since at least in or about the late 1970s, IAI has been a defense manufacturing contractor for the Israeli government.
- c. From in or about July 1980 through in or about November 1985, CC-1 was employed by the Government of Israel as the Consul for Science Affairs at the Israeli Consulate General in Manhattan, New York (the "Israeli Consulate"). While he was employed at the Israeli Consulate, CC-1 resided in the Riverdale section of Bronx, New York (the "Riverdale Residence").
- d. In or about November 1985, Jonathan Jay Pollard was charged with espionage-related offenses in relation to his having provided classified information to CC-1, among other people.

- e. In or about November 1985, CC-1 left the United States and has not returned to the United States.
- f. CC-1 has never received security clearances in order to have access to any documents and information classified by the U.S. government.

# Control of Classified Information and Documents

- 14. Pursuant to Executive Order 12356, as superseded by by Executive Order 12958 and amended my Executive Order 13292, (the "Order"), classified information is defined as information in any form that (1) is owned by, produced by or for, or under the control of the United States Government; (2) falls within one or more of the categories set forth in Section 1.5 of the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. Among the categories of information set out in Section 1.5 of the Order is information concerning military plans, weapons systems, or operations (1.5(a)); foreign government information (1.5(b)); intelligence activities, including intelligence sources and methods (1.5(c)); and foreign relations or foreign activities of the United States, including confidential sources (1.5(d)).
- 15. The Order mandates that information requiring protection for reasons of national security be classified at one of three levels: "Top Secret," "Secret," or "Confidential." The designation "Top Secret" applies to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. designation "Secret" applies to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to national security. The designation "Confidential" applies to information, the unauthorized disclosure of which reasonably could be expected to cause damage to national security. Access to classified information at any level may be further restricted through compartmentation in "Sensitive Compartmented Information" ("SCI") categories. Dissemination of classified information at any level may be further restricted through caveats such as "Not Releasable to Foreign Nationals" ("NOFORN").
- 16. Classified information, of any designation, may only be shared with persons determined by an appropriate U.S. government official to be eligible for access to classified information, who have signed an approved non-disclosure agreement, and who possess a need to know the content of the classified information. If a

person is not eligible to receive classified information, classified information may not be disclosed to that person.

### The Conspiracies

- 17. Based on information obtained from the Arsenal, I have learned that from at least in or about 1970 through in or about 1985:
- a. The Arsenal kept a library of documents (the "Library"), which included numerous documents with classified information related to the national defense of the United States.
- b. In order to borrow documents with classified information from the Library, the Arsenal required its employees to complete and sign a form called the "Classified Document Accountability Record," ("CDAR Form"), which listed, among other things, the title and classification of each of the documents being signed out on a given date. The borrower was then given a copy of the CDAR Form.
- c. From at least on or about August 23, 1979, through on or about July 15, 1985, BEN-AMI KADISH, the defendant, signed at least 24 CDAR Forms, showing that KADISH borrowed at least 35 classified documents (the "Classified Documents") from the Library at the Arsenal.
- 18. Each of the Classified Documents contained information related to the national defense of the United States. For example:
- a. One of the Classified Documents contained information concerning nuclear weaponry and was classified as "RESTRICTED DATA," a specific designation by the U.S. Department of Energy, because the document contained atomic-related information (the "Restricted Data Document"). BEN-AMI KADISH, the defendant, was not authorized to view the Restricted Data Document or to borrow it from the Library because, among other things, his clearance level (<u>i.e.</u>, "Secret") did not permit KADISH to view the Restricted Data Document.
- b. Another one of the Classified Documents contained information concerning a major weapons system, <u>i.e.</u>, information regarding a modified version of an F-15 fighter jet that the United States had sold to another foreign country (the "F-15 Document"). The F-15 Document was classified by the Department of Defense as "Secret" and was further restricted as "NOFORN," or "Not Releasable to Foreign Nationals."

- c. Another one of the Classified Documents contained information concerning a major weapons system and a major element of defense strategy, <u>i.e.</u>, information regarding the U.S. Patriot missile air defense system (the "Patriot Document"). The Patriot Document was classified by the Department of Defense as "Secret."
- 19. On or about March 20, 2008, another law enforcement agent and I interviewed BEN-AMI KADISH, the defendant, at an FBI office in New Jersey (the "First Interview"). KADISH stated, in substance and in part, the following:
- a. Sometime in the 1970s, after KADISH had begun working at the Arsenal, and while CC-1 was still employed at IAI, KADISH was introduced to CC-1 by KADISH's brother, who was one of CC-1's then-co-workers at IAI. Specifically, KADISH and CC-1 met in person in the New York City area (the "Initial Meeting").
- b. At the Initial Meeting, CC-1 did not ask KADISH to provide him (CC-1) with access to any classified documents. In numerous subsequent meetings, CC-1 asked, and KADISH agreed, to provide him (CC-1) with classified documents that would help protect Israel.
- c. KADISH obtained classified documents for CC-1 from the Library at the Arsenal. KADISH did not choose the classified documents that he retrieved from the Arsenal. Rather, CC-1 provided KADISH with lists of specific items to obtain from the Library, which KADISH would then borrow from the Library.
- d. KADISH borrowed the classified documents from the Library by signing CDAR Forms. After borrowing the classified documents from the Library, KADISH would take them back to his office at the Arsenal, put them into his briefcase, and take them at the end of the work day to the residence in New Jersey where he (KADISH) was then living (the "Residence"). CC-1 would later call KADISH and then travel to the Residence, where CC-1 would take photographs of the classified documents in the basement of the Residence. KADISH knew that he (CC-1) photographed the classified documents in the basement. The next morning, KADISH would take the classified documents back to the Arsenal and return them to the Library.
- e. During the First Interview, I showed KADISH classified documents that the FBI had obtained from the Arsenal, including the Restricted Data Document and the F-15 Document. KADISH confirmed that he had borrowed the Classified Documents for CC-1, signed the CDAR Forms to obtain the Classified Documents, and provided CC-1 with access to the Classified

#### Documents.

- f. KADISH recognized the Restricted Data Document and confirmed that he knew at the time that he made it available to CC-1 that (1) the Restricted Data Document included atomic-related information; (2) he (KADISH) did not have the requisite clearance nor the necessary need to know in order to borrow the document from the Library; and (3) he (KADISH) had provided CC-1 with access to the Restricted Data Document.
- g. KADISH recognized the F-15 Document and confirmed that he had obtained the F-15 Document for CC-1 because it had a direct correlation to Israel's security.
- h. In total, KADISH provided CC-1 with approximately 50 to 100 classified documents, all of which were borrowed from the Library at the Arsenal.
- i. KADISH said he (KADISH) believed that providing classified documents to CC-1 would help Israel.
- j. KADISH is no longer living at the Residence. In or about 1995, he (KADISH) moved to another location in New Jersey, where he (KADISH) has since resided (the "Current Residence").
- k. During the First Interview, I also gave to KADISH my business card, which stated that I was an FBI special agent working within the Southern District of New York.
- 20. On or about March 20, 2008, after the First Interview with the FBI, CC-1 called a telephone number associated with the Current Residence of BEN-AMI KADISH, the defendant, and spoke with KADISH (the "Telephone Conversation"). During the Telephone Conversation, CC-1 instructed KADISH to lie to law enforcement officials. For example, CC-1 stated: "Don't say anything. Let them say whatever they want. You didn't . . . do anything . . . . What happened 25 years ago? You didn't remember anything."
- 21. On or about March 21, 2008, another law enforcement agent and I interviewed BEN-AMI KADISH, the defendant, (the "Second Interview"), at KADISH's Current Residence. KADISH stated, in substance and in part, the following:

<sup>&</sup>lt;sup>1</sup> The information set forth in this paragraph is based on a preliminary translation of the Telephone Call, which was conducted primarily in Hebrew.

- a. CC-1 never paid him (KADISH) money to obtain classified documents. Rather, CC-1 gave KADISH small gifts and occasionally bought dinner for KADISH and his family at a restaurant in the Riverdale section of the Bronx.
- b. KADISH and CC-1 have kept in touch since CC-1's departure from the United States in 1985. KADISH and CC-1 have primarily maintained contact by telephone and e-mail, and in 2004, they saw each other in person in Israel. According to KADISH, all of their contacts after 1985 have been for purely social reasons.
- c. KADISH did not speak with CC-1 after the First Interview with the FBI.
- 22. On or about March 21, 2008, prior to the Second Interview, a subpoena was issued on behalf of a grand jury sitting in the Southern District of New York (the "Subpoena"). The Subpoena was addressed to BEN-AMI KADISH, the defendant, but was not served on him at the Second Interview.
- 23. Based on a review of telephone records, I have learned the following:
- a. From at least in or about July 1985 through in or about November 1985, at least twenty-two telephone calls were placed from the Riverdale Residence of CC-1 to the telephone number associated with the Residence, where BEN-AMI KADISH, the defendant, was then living.

WHEREFORE, deponent prays that warrants be issued for the arrest of BEN-AMI KADISH, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

LANCE A. ASHWORTH

Special Agent

Federal Bureau of Investigation

Sworn to before me this 21st day of April, 2008.

UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK

> DOUGLAS F. EATON UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK