

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN CIVIL LIBERTIES UNION; AMERICAN
CIVIL LIBERTIES UNION FOUNDATION;
AMERICAN CIVIL LIBERTIES UNION OF
MICHIGAN; COUNCIL ON AMERICAN-ISLAMIC
RELATIONS; COUNCIL ON AMERICAN-ISLAMIC
RELATIONS MICHIGAN; GREENPEACE, INC.;
NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS; JAMES BAMFORD; LARRY
DIAMOND; CHRISTOPHER HITCHENS; TARA
MCKELVEY; and BARNETT R. RUBIN,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY / CENTRAL
SECURITY SERVICE; and LIEUTENANT
GENERAL KEITH B. ALEXANDER, in his official
capacity as Director of the National Security Agency
and Chief of the Central Security Service,

Defendants.

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF**

Case No.

Hon.

ANN BEESON

Attorney of Record

JAMEEL JAFFER

MELISSA GOODMAN (*admission pending*)

CATHERINE CRUMP (*admission pending*)

National Legal Department

American Civil Liberties Union Foundation

125 Broad Street, 18th Floor

New York, NY 10004-2400

(212) 549-2500

MICHAEL J. STEINBERG

KARY L. MOSS

American Civil Liberties Union Fund of Michigan

60 West Hancock Street

Detroit, MI 48201-1343

(313) 578-6814

PRELIMINARY STATEMENT

1. This lawsuit challenges the constitutionality of a secret government program to intercept vast quantities of the international telephone and Internet communications of innocent Americans without court approval (hereinafter “the Program”). The National Security Agency / Central Security Service (“NSA”) launched the Program in 2001 and the President of the United States ratified it in 2002.

2. Plaintiffs are a group of prominent journalists, scholars, attorneys, and national nonprofit organizations who frequently communicate by telephone and email with people outside the United States, including in the Middle East and Asia. Because of the nature of their calls and emails, and the identities and locations of those with whom they communicate, plaintiffs have a well-founded belief that their communications are being intercepted under the Program. The Program is disrupting the ability of the plaintiffs to talk with sources, locate witnesses, conduct scholarship, and engage in advocacy.

3. By seriously compromising the free speech and privacy rights of the plaintiffs and others, the Program violates the First and Fourth Amendments of the United States Constitution. It also violates constitutional separation of powers principles, because it was authorized by President George W. Bush in excess of his Executive authority and contrary to limits imposed by Congress. In response to widespread domestic surveillance abuses committed by the Executive Branch and exposed in the 1960s and 1970s, Congress enacted legislation that provides “the *exclusive means* by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted.” 18 U.S.C. § 2511(2)(f) (emphasis

added). Plaintiffs respectfully seek a declaration that the Program is unlawful, and a permanent injunction against its use.

JURISDICTION AND VENUE

4. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court’s jurisdiction under Article III of the United States Constitution and 28 U.S.C. § 1331. The Court also has jurisdiction under the Administrative Procedures Act, 5 U.S.C. § 702. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* The Court has authority to award costs and attorneys’ fees under 28 U.S.C. § 2412. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

5. The American Civil Liberties Union (“ACLU”) is a 501(c)(4) non-profit, non-partisan organization that engages in public education and lobbying about the constitutional principles of liberty and equality. The ACLU has more than 500,000 members and has members in every state, including Michigan. The ACLU sues on its own behalf and on behalf of its staff and members.

6. The American Civil Liberties Union Foundation (“ACLUF”) is a 501(c)(3) organization that educates the public about civil liberties issues and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLUF sues on its own behalf and on behalf of its staff.

7. The American Civil Liberties Union of Michigan (“ACLU of Michigan”) is a 501(c)(4) non-profit, non-partisan organization that engages in public education and lobbying about civil rights and civil liberties in the state of Michigan. The

ACLU of Michigan has approximately 15,000 members. The ACLU of Michigan sues on its own behalf or on behalf of its members.

8. The National Association of Criminal Defense Lawyers (“NACDL”) is a 501(c)(6) non-profit organization based in Washington, D.C. whose direct membership is comprised of more than 13,000 criminal defense lawyers. The NACDL has members in every state, including Michigan. The NACDL sues on its own behalf and on behalf of its members.

9. The Council on American-Islamic Relations (“CAIR”) is a 501(c)(4) non-profit organization based in Washington, D.C. and is the largest Islamic civil liberties organization in the United States. CAIR has chapters and members nationwide and members in over 25 countries. CAIR sues on its own behalf and on behalf of its staff and members.

10. The Council on American-Islamic Relations Michigan (“CAIR-Michigan”) is a 501(c)(3) organization and represents the interest of the American Muslim community living in the state of Michigan. CAIR-Michigan sues on its own behalf and on behalf of its members.

11. Greenpeace, Inc. (“Greenpeace”) is a non-profit advocacy organization based in Washington, D.C. dedicated to combating the most serious threats to the planet’s biodiversity and environment. Greenpeace has approximately 250,000 members nationwide, including members in Michigan. Internationally, Greenpeace has a presence in 39 other countries and more than 2.5 million members. Greenpeace sues on its own behalf, and on behalf of its staff and members.

12. James Bamford is an award-winning author and journalist. He is one of the world's leading experts on U.S. intelligence and the National Security Agency and he has published numerous books and articles on those topics. Mr. Bamford lives in Washington, D.C.

13. Larry Diamond is a Senior Fellow at the Hoover Institution at Stanford University. He is a leading expert on governance and development in Iraq, Asia, Africa and Latin America. Professor Diamond lives in Stanford, California.

14. Christopher Hitchens is a prominent reporter and bestselling author who has written numerous articles and books on topics including U.S. policy in the Middle East and Islamic fundamentalism. Mr. Hitchens lives in Washington, D.C.

15. Tara McKelvey is a senior editor at The American Prospect, and has written numerous articles and books on topics including U.S. policy in the Middle East. Ms. McKelvey lives in Washington, D.C.

16. Barnett R. Rubin is Director of Studies and Senior Fellow at the New York University Center on International Cooperation. Professor Rubin is an internationally renowned scholar on conflict and peace, with a particular focus on Afghanistan, South Asia, and Central Asia, and has written numerous books and articles about Afghan history, politics, and development. Professor Rubin lives in New York.

17. Defendant National Security Agency / Central Security Service (“NSA”) is the agency of the United States government responsible for administering the warrantless surveillance program challenged in this case.

18. Defendant Lieutenant General Keith B. Alexander is the Director of the NSA. Defendant Lieutenant General Alexander has ultimate authority for supervising and implementing all operations and functions of the NSA.

LEGAL FRAMEWORK

19. The First Amendment provides in relevant part that “Congress shall make no law . . . abridging the freedom of speech, or of the press.”

20. The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

21. Congress has enacted two statutes that together supply “the *exclusive means* by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted.” 18 U.S.C. § 2511(2)(f) (emphasis added). The first is Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (“Title III”), 18 U.S.C. § 2510 *et seq.*, and the second is the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.* (“FISA”).

Title III

22. Congress enacted Title III in response to the U.S. Supreme Court’s recognition, in *Katz v. United States*, 389 U.S. 347 (1967), that individuals have a constitutionally protected privacy interest in the content of their telephone calls. Through Title III, Congress created a statutory framework to govern the surveillance of wire and oral communications in law enforcement investigations.

23. In its current form, Title III authorizes the government to intercept wire, oral, or electronic communications in investigations of certain enumerated criminal offenses, *see* 18 U.S.C. § 2516, with prior judicial approval, *see id.* § 2518. In order to obtain a court order authorizing the interception of a wire, oral, or electronic communication, the government must demonstrate “probable cause for belief that an individual is committing, has committed, or is about to commit” one of the enumerated criminal offenses. *Id.* § 2518(3)(a). It must also demonstrate, among other things, “probable cause for belief that particular communications concerning [the enumerated] offense will be obtained through [the] interception,” *id.* § 2518(3)(b), and that “normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous,” *id.* § 2518(3)(c).

24. Every court order authorizing surveillance under Title III must include a provision requiring that the interception be “conducted in a such a way as to minimize the interception of communications not otherwise subject to interception under this chapter.” *Id.* § 2518(5).

25. While Title III generally permits surveillance only with prior judicial authorization, the statute includes a provision that allows for warrantless surveillance in “emergency situation[s]” – where, for example, a “situation exists that involves . . . immediate danger of death or serious physical injury to any person.” *Id.* § 2518(7)(a). Where an emergency situation exists and “there are grounds upon which an order could be entered . . . to authorize . . . interception,” the statute permits specified executive officials to authorize warrantless surveillance “if an application for an order approving

the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur.” *Id.* § 2518(7)(b).

26. Title III specifies civil and criminal penalties for surveillance that is not authorized. *See id.* §§ 2511 & 2520.

27. As originally enacted, Title III provided that “[n]othing contained in this chapter. . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government.” *See* 18 U.S.C. § 2511(3) (1976). As discussed below, Congress repealed this provision in 1978.

Foreign Intelligence Surveillance Act

28. In 1978, Congress enacted FISA to govern the use of electronic surveillance against foreign powers and their agents inside the United States. The statute created the Foreign Intelligence Surveillance Court, a court composed of seven (now eleven) federal district court judges, and empowered this court to grant or deny government applications for electronic surveillance orders in foreign intelligence investigations. *See* 50 U.S.C. § 1803(a).

29. Congress enacted FISA after the U.S. Supreme Court held, in *United States v. United States District Court for the Eastern District of Michigan*, 407 U.S. 297 (1972), that the Fourth Amendment does not permit warrantless surveillance in intelligence investigations of domestic security threats. FISA was a response to that decision and to the Report of the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities, S.Rep. No. 94-755, 94th Cong., 2d Sess. (1976) (“Church Committee Report”), which found that the executive had engaged in warrantless wiretapping of numerous United States citizens – including journalists, activists, and Congressmen – who posed no threat to the nation’s security and who were not suspected of any criminal offense. The Church Committee Report warned that “[u]nless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.”

30. When Congress enacted FISA, it amended Title III to provide that the procedures set out therein and in FISA “shall be the *exclusive means* by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted.” 18 U.S.C. § 2511(2)(f) (emphasis added). FISA provides that no one may engage in electronic surveillance “except as authorized by statute,” *id.* § 1809(a)(1), and it specifies civil and criminal penalties for electronic surveillance undertaken without statutory authority, *see id.* §§ 1809 & 1810. The Senate Judiciary Committee explained that “[t]he basis for this legislation is the understanding – concurred in by the Attorney General – that even if the President has an ‘inherent’ Constitutional power to authorize warrantless surveillance for foreign intelligence

purposes, Congress has the power to regulate the exercise of this authority by legislating a reasonable warrant procedure governing foreign intelligence surveillance.” S. Rep. 95-604(I), reprinted at 1978 U.S.C.C.A.N. at 3917. The Committee further explained that the legislation was meant to “spell out that the executive cannot engage in electronic surveillance within the United States without a prior Judicial warrant.” *Id.* at 3906.

31. FISA defines “electronic surveillance” broadly to include:
 - a. “the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes”;
 - b. “the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States . . .”;
 - c. “the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States”; and

- d. “the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.” 50 U.S.C. § 1801(f).

32. FISA defines “contents” to include “any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.” 50 U.S.C. § 1801(n). It defines “United States person” to include United States citizens and lawful permanent residents. *Id.* § 1801(d).

33. In order to obtain an order from the FISA Court authorizing electronic surveillance, the government must demonstrate, among other things, probable cause to believe that “the target of the electronic surveillance is a foreign power or an agent of a foreign power” and that “each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power.” *Id.* § 1805(a)(3).

34. While FISA generally prohibits surveillance without prior judicial authorization, it, like Title III, includes a provision that allows for warrantless surveillance in “emergency situation[s].” *Id.* § 1805(f). Where an emergency situation exists and “the factual basis for issuance of an order under this subchapter to approve such surveillance exists,” the statute permits the Attorney General to authorize warrantless surveillance “if a judge having jurisdiction under section 1803 of this title is informed by the Attorney General or his designee at the time of such authorization that

the decision has been made to employ emergency electronic surveillance and if an application in accordance with this subchapter is made to that judge as soon as practicable, but not more than 72 hours after the Attorney General authorizes such surveillance.” *Id.*

35. FISA also allows the Attorney General to authorize electronic surveillance without a court order for up to one year if the Attorney General certifies in writing under oath that the electronic surveillance is directed solely at the property or means of communication used exclusively by a foreign power, that “there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party,” and that there are minimization procedures in place. *Id.* § 1802.

36. Finally, FISA permits electronic surveillance without a court order for fifteen days after a formal declaration of war. *Id.* § 1811 (“Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.”).

37. FISA requires the Attorney General to report to the House and Senate Intelligence Committees twice a year regarding “all electronic surveillance” authorized under FISA. *Id.* § 1808(a). Statistics released annually by the Justice Department indicate that, between 1978 and 2004, the government submitted almost 19,000 surveillance applications to the FISA Court. The FISC denied four of these applications;

granted approximately 180 applications with modifications; and granted the remainder without modifications.

FACTUAL BACKGROUND

The Program

38. According to published news reports, in the fall of 2001 the NSA launched a secret surveillance program (“the Program”) to intercept, without prior judicial authorization, the telephone and Internet communications of people inside the United States. President Bush ratified the Program in 2002. Since then, the President has reauthorized the Program more than 30 times.

39. Under the Program, the NSA engages in “electronic surveillance” as defined by FISA and Title III.

40. Under the Program, the NSA intercepts vast quantities of the international telephone and Internet communications (hereinafter collectively “communications”) of people inside the United States, including citizens and lawful permanent residents.

41. Under the Program, the NSA also intercepts some purely domestic communications, that is, communications among people all of whom are inside the United States.

42. Under the Program, the NSA intercepts the communications of people inside the United States without probable cause to believe that the surveillance targets have committed or are about to commit any crime.

43. Under the Program, the NSA intercepts the communications of people inside the United States without probable cause to believe that the surveillance targets are foreign powers or agents thereof.

44. Under the Program, the NSA intercepts the communications of people inside the United States without obtaining authorization for each interception from the President or the Attorney General.

45. Under the Program, NSA shift supervisors are authorized to approve NSA employees' requests to intercept the communications of people inside the United States.

46. Under the Program, the NSA accesses communications in at least three ways.

47. First, the NSA uses NSA-controlled satellite dishes to access communications that are transmitted via satellite. Some of these NSA-controlled satellite dishes are located within the United States.

48. Second, the NSA works with telecommunications companies to access communications that pass through switches controlled by these companies. These switches, which are located inside the United States, serve as primary gateways for communications going into and out of the United States. The switches connect to trans-oceanic fiber optic cables that transmit communications to other countries.

49. Third, the NSA works with Internet providers and telecommunications companies to access communications transmitted over the Internet.

50. Under the Program, the NSA intercepts, retains, and analyzes communications in at least three ways.

51. First, the NSA obtains names, telephone numbers and Internet addresses from the cell phones, computers, and other information found in the possession of persons deemed suspicious. The NSA intercepts the telephone numbers and Internet addresses associated with these people, as well as numbers and emails associated with anyone who communicates with them, and continues to identify additional telephone numbers and Internet addresses in an expanding network of people with fewer and fewer links to the original suspect. Through this method, the NSA intercepts the contents of the communications of as many as a thousand people inside the United States at any one time.

52. Second, the NSA intercepts communications to and from particular countries, including Iraq and Afghanistan. The intercepted communications include calls and emails between people inside the United States and people in those other countries.

53. Third, the NSA engages in wholesale datamining of domestic and international communications. It uses artificial intelligence aids to search for keywords and analyze patterns in millions of communications at any given time. One purpose of this datamining is to identify individuals for targeted surveillance.

54. Under the Program, the NSA does not obtain judicial review before or after intercepting the communications of people inside the United States.

55. The NSA has submitted information obtained through the Program to the Foreign Intelligence Surveillance Court in order to support applications for surveillance orders under FISA.

Plaintiffs' Allegations

56. Plaintiffs and their staff and members (hereinafter "plaintiffs") routinely communicate by email and telephone with people outside the United States, including people in the Middle East and Asia.

57. Some of the plaintiffs, in connection with scholarship, journalism, or legal representation, communicate with people whom the United States government believes or believed to be terrorist suspects or to be associated with terrorist organizations.

58. Plaintiffs communicate about subjects that are likely to trigger scrutiny by the NSA under the Program.

59. Some of the plaintiffs conduct research on the Internet concerning topics that are likely to trigger scrutiny under the Program.

60. Because of the nature of plaintiffs' communications and the identities and locations of those with whom they communicate, plaintiffs have a well-founded belief that their domestic and international communications are being intercepted by the NSA under the Program.

61. The Program is substantially impairing plaintiffs' ability to obtain information from sources abroad, to locate witnesses, to represent their clients, to conduct scholarship, and to engage in advocacy.

62. The Program is inhibiting the lawful, constitutionally protected communications of plaintiffs and others not before the Court.

American Civil Liberties Union and American Civil Liberties Union Foundation

63. The ACLU is a 501(c)(4) non-profit, non-partisan organization that engages in public education and lobbying about the constitutional principles of liberty and equality. The ACLU has more than 500,000 members. The ACLU's activities include lobbying Congress on legislation that affects civil liberties, analyzing and educating the public about such legislation, and mobilizing ACLU members and activists to lobby their legislators to protect civil rights and civil liberties.

64. The ACLUF is a 501(c)(3) organization that educates the public about civil liberties and that employs lawyers who provide legal representation free of charge in cases involving civil liberties.

65. Since September 11, a core priority of the ACLU and the ACLUF has been to publicize and oppose violations of civil liberties effected in the name of national security. This work frequently requires ACLU and ACLUF staff and members to communicate by email and telephone with people and organizations outside the United States. The international communications of ACLU and ACLUF staff and members concern a range of subjects that are likely to trigger scrutiny under the Program.

66. For example, in November and December 2002, ACLU staff traveled to Pakistan to interview men whom the Immigration and Naturalization Service had arrested and held after the terrorist attacks of September 2001 as "special interest" detainees but subsequently deported without having been charged with any terrorism related offense. In preparation for this trip, ACLU staff communicated by telephone and email with people and organizations in Pakistan and India. For example, Marsha Zeeman, the ACLU's Director of Campaigns and Special Projects, and Emily Whitfield, the ACLU's

Media Relations Director, communicated by telephone and email on multiple occasions with staff of the Human Rights Commission of Pakistan, an organization based in Karachi. Whitfield also communicated by email with Ash-har Quraishi, Cable News Network's correspondent in Pakistan; with Carlotta Gall, a New York Times correspondent in Pakistan; and with David Rohde, a New York Times correspondent in India. Some of the communications of ACLU staff concerned individuals whom the Justice Department's website describes as "linked to the September 11th investigation."

67. In January 2004, the ACLUF filed a petition with the United Nations Working Group on Arbitrary Detention on behalf of some of the men whom the INS had held as "special interest" detainees. The drafting of the petition required ACLUF attorney Omar Jadwat and other ACLUF employees to communicate by telephone and email with former detainees living in Pakistan, Egypt, and Jordan.

68. Since March 2005, ACLUF attorneys and staff have been investigating instances in which the CIA has transferred – "rendered" – foreign nationals to detention and interrogation in facilities operated by the CIA outside U.S. sovereign territory and to countries and intelligence services that are known to employ torture and other forms of cruel, inhuman or degrading treatment. In connection with this research, ACLUF attorneys and human rights advisors have communicated by telephone and email with individuals whom the CIA has alleged are associated with terrorist organizations. ACLUF attorneys and staff have also communicated by telephone and email with attorneys representing these individuals.

69. ACLUF attorneys currently represent Khaled El-Masri, a German citizen residing in Neu-Ulm, Germany, whom the CIA rendered to a CIA-run prison in

Afghanistan in January 2004. ACLUF human rights advisor Steven Watt regularly communicates by telephone and email with Mr. El-Masri and with Mr. El-Masri's German attorney, Manfred Gnjudic. In addition, as part of the ACLU's research into the extraordinary rendition program, Mr. Watt regularly communicates by telephone with attorneys based in Sweden and Egypt representing Ahmed Agiza and Mohammed Alzery, whom the CIA rendered from Sweden to Egyptian custody in December 2001, and with the Italian attorney representing Abu Omar, whom the CIA rendered from Italy to Egyptian custody in February 2003.

70. ACLUF attorneys also currently represent a number of individuals who were detained and abused by United States forces at Abu Ghraib prison in Iraq and at other detention facilities in Iraq and Afghanistan. ACLUF attorney Omar Jadwat and ACLUF human rights advisor Jamil Dakwar regularly communicate by telephone and email with individuals in Iraq and Afghanistan, including plaintiffs in the litigation, concerning the treatment of prisoners held by United States forces in those countries. Some of these communications concern individuals who remain in the custody of United States forces.

71. Because of the content of their communications and the identities and locations of individuals with whom they are communicating, ACLU and ACLUF staff have a well-founded belief that their communications are being intercepted by the NSA under the Program.

72. The Program substantially impairs the ability of the ACLU and ACLUF to engage in communication that is vital to their respective missions. The Program requires ACLU and ACLUF staff and members to minimize the sensitive information

they include in their communications because of the risk that such information will be intercepted. In addition, ACLU and ACLUF staff and members believe that individuals abroad are more reticent in communicating with them because of the possibility that their communications are being intercepted by the NSA under the Program.

73. Attorneys at the ACLUF have represented to many of their clients that their telephone and email communications with ACLUF attorneys are confidential and covered by the attorney-client privilege. The willingness of ACLUF clients to consult with ACLUF attorneys and to provide information to ACLUF attorneys is based in part on that assurance. The Program is inhibiting candid communication between ACLUF attorneys and their clients and is thereby compromising the ability of ACLUF attorneys to effectively represent their clients.

American Civil Liberties Union of Michigan

74. The ACLU of Michigan is the Michigan affiliate of the ACLU and is dedicated to defending the civil liberties of Michigan residents. Its activities include lobbying the Michigan legislature on proposed bills that affect civil liberties, educating the Michigan public about such legislation and mobilizing ACLU of Michigan members and activists to lobby their representatives to protect civil rights and civil liberties.

75. Since September 11, 2001, a core priority of the ACLU of Michigan has been to publicize and oppose violations of civil liberties affected in the name of national security. For example, the Michigan ACLU established a “Safe and Free Project” devoted to post-9/11 civil liberties issues and hired a staff attorney for the project. It opposed state legislation that it believed unnecessarily sacrificed civil liberties in the name of national security. It mobilized its members to lobby local government bodies

across the state, resulting in the enactment of sixteen local resolutions opposing provisions of the USA PATRIOT Act that pose the most serious threats to civil liberties. The manner in which post-9/11 measures impact Arab-Americans is especially important to the Michigan ACLU affiliate because southeast Michigan has the highest concentration of Arab-Americans in the country.

76. The ACLU of Michigan has many members who regularly communicate with people outside the United States, including in the Middle East and Asia. Because of the nature of these communications, the identities of the individuals with whom they communicate, and the locations of individuals with whom they communicate, ACLU of Michigan members have a well-founded belief that their communications are being intercepted by the NSA under the Program. The Program is inhibiting ACLU of Michigan members from communicating freely and candidly in their personal and professional communications.

Noel Saleh

77. Noel Saleh is a member of the ACLU of Michigan who resides in Wayne County, Michigan. He is a United States citizen. He is a licensed attorney in the State of Michigan and served as the staff attorney for the American Civil Liberties Union of Michigan's "Safe and Free Project" from 2002 to 2004.

78. Mr. Saleh has been a community activist for Arab causes both in the United States and in the Arab World. Since 1989 he has served on the board of ACCESS, the Arab Community Center for Economic and Social Services. Currently, he is the Chair of the ACCESS Board of Directors. As part of his role as an ACCESS Board member, Mr. Saleh is frequently called upon to comment on current affairs and events

affecting the Arab American community.

79. Mr. Saleh has friends and family in Lebanon, Jordan and the Occupied Palestinian Territories with whom he frequently communicates by phone and by email. Prior to becoming aware of the Program, Mr. Saleh communicated with family members about various political topics and their opinions on current events including Israeli repression of Palestinians under occupation, Palestinian Right of Return and statehood, Islamic fundamentalists, terrorism, Osama bin Laden, al Qaeda, and America's role in each of these areas.

80. Because of his frequent communications with numerous people in the Middle East and other foreign countries about topics likely to trigger monitoring, Mr. Saleh has a well-founded belief that his communications are currently being intercepted by the NSA under the Program.

81. The likelihood that his communications are being intercepted by the NSA under the Program impinges on Mr. Saleh's ability to communicate freely and candidly in his international calls and emails. Since learning of the Program in news reports, he has refrained from talking about or emailing friends and family abroad about topics that might trigger monitoring.

82. The Program also interferes with Mr. Saleh's efforts to promote peace and justice in this country. Before he became aware of the Program, he felt free to engage in free and open communication with people in other countries about critical issues of the day. He gained unique insight from these conversations into U.S. foreign policy that he could not gain from the media in this country. Because of the NSA Program, he is less willing to engage in substantive discussions with people abroad and

therefore is not able to either gain these unique insights or share them with others.

Mohammed Abdrabboh

83. Mohammed Abdrabboh is a member of the ACLU of Michigan and has been a member of the ACLU of Michigan's Board of Directors since 2002. He is a United States citizen and a licensed attorney in the State of Michigan, with a practice in immigration, criminal defense and civil rights law, in Wayne County, Michigan. Mr. Abdrabboh serves as a Commissioner on the Michigan Civil Rights Commission, to which he was appointed by the Governor in May 2003. Mr. Abdrabboh also teaches a course on civil liberties and national security at the University of Michigan at Dearborn.

84. Mr. Abdrabboh frequently communicates by telephone and email with family in the West Bank, Gaza, and Jerusalem. After law school, Mr. Abdrabboh worked for Al Haq, a human rights organization in the West Bank. He frequently communicates with friends and acquaintances he met while working there. He also communicates a number of times per month by telephone and email with friends and acquaintances in Saudi Arabia.

85. Approximately ninety-percent of Mr. Abdrabboh's clientele come from countries in the Middle East. As part of his immigration practice, he regularly represents individuals who live in the Middle East and are seeking to enter the United States, and as part of his representation he must conduct all communications with them through telephone and email. The nature of Mr. Abdrabboh's law practice requires him to communicate regularly by telephone and email with people in Lebanon, the West Bank and Gaza. His practice also requires that he occasionally communicate with individuals by telephone and email in Jordan, Afghanistan and Yemen. These communications are

essential in providing effective representation to his clients.

86. As part of his criminal defense practice, Mr. Abdrabboh has represented and continues to represent people the government has suspected of allegedly having some link to terrorism or terrorist organizations.

87. Because of the nature of his communications, the identities and locations of people with whom he communicates, Mr. Abdrabboh has a well-founded belief that his communications are being intercepted by the NSA under the Program.

88. The Program has inhibited communications between Mr. Abdrabboh and his family and friends because he is less candid about his political views and avoids saying things that are critical of the U.S. government over the telephone or through email.

89. The Program has inhibited communications between Mr. Abdrabboh and his clients, both foreign and domestic. Since learning of the Program, Mr. Abdrabboh has limited his communications about sensitive or privileged matters over the telephone or by email for fear the government is monitoring the communication. Instead, he has tried to limit such communications to in-person meetings, which has greatly impaired his ability to quickly get information he needs for the purpose of representing clients. Mr. Abdrabboh also believes that some of his clients have now stopped giving him sensitive information over the telephone. In one instance, a client who now lives in Afghanistan refused to share information over the telephone with Mr. Abdrabboh that was necessary to his representation in an immigration matter because the client feared the communication was being monitored by the government.

Nabih Ayad

90. Nabih Ayad is a member of the ACLU of Michigan. He is a licensed

attorney whose practice includes immigration, criminal defense and civil rights cases, in Wayne County, Michigan. Since 2002, he has served on the Lawyers Committee of the ACLU of Michigan, a committee that makes recommendations to the Board of Directors about which cases to pursue.

91. In his immigration practice, Mr. Ayad represents individuals throughout the Middle East and South Asia including individuals from Lebanon, Syria, Jordan, Egypt, United Arab Emirates, Iraq, Iran and Saudi Arabia. The government has attempted to deport some of his clients because of suspected ties to terrorism. For example, the government suspected some of his clients of supporting, or having ties to, the military wing of Hezbollah, a group that has been designated a terrorist organization by the Department of State. Mr. Ayad has also represented individuals from Lebanon, Liberia, and Trinidad who seek political asylum in this country. He successfully prevented 130 immigrants from Lebanon and Yemen accused of visa fraud from being deported through an expedited removal process. In the course of his immigration practice, Mr. Ayad is required to communicate by phone or through email with clients, clients' families and associates, and witnesses in the countries mentioned above.

92. Mr. Ayad has represented criminal defendants from Middle Eastern countries who have been accused of terrorism-related crimes. For example, he represented one individual from Jordan with suspected ties to the Taliban who came into this country with \$12 million of counterfeit checks. He represented a man for Yemen who case was dismissed at the preliminary examination after he was wrongfully accused of attempting to blow up a federal building in Detroit. He also represented individuals from Lebanon who were accused of smuggling weapons overseas to Hezbollah. Through

the course of his criminal defense work, it is necessary to prepare a defense by communicating with clients, clients' families, witnesses and others in the client's home countries.

93. Mr. Ayad is a naturalized U.S. Citizen who was born in Lebanon. He has family and friends in Lebanon and Germany with whom he communicates by phone and email. When speaking with friends and family in the past, he discussed current events in the Middle East including the war in Iraq and terrorism.

94. Because of the nature of his communications, the identities of the some of the people with whom he communicates and the subject matter of conversations, Mr. Ayad has a well-founded belief that his communications are being intercepted by the NSA under the Program.

95. The Program has already inhibited communications between Mr. Ayad and individuals in the Middle East and Asia that are necessary to provide effective legal representation to his clients. Because of the Program, Mr. Ayad will not have certain kinds of conversations by phone or email for fear that the government might be monitoring his communications. For example, he will no longer communicate by phone or email about important strategic matters and about certain evidence in terrorist-related immigration or criminal cases. In addition, because of the program Mr. Ayad will even avoid discussing certain political topics with family and friends abroad for fear that such conversations will trigger monitoring.

Council on American-Islamic Relations

96. Plaintiff CAIR is a non-profit and non-partisan grassroots organization dedicated to enhancing the general public's understanding of Islam, protecting civil

liberties, empowering American Muslims and building coalitions that promote social justice and mutual understanding. CAIR is the largest Islamic civil liberties organization in the United States with more than 30 affiliated sister chapters throughout the United States and Canada representing the interests of over seven million American Muslims.

97. CAIR's Communications Department works in conjunction with local, national and international media outlets to ensure that an accurate portrayal of Islam and Muslims is presented to the general public. CAIR's daily news release service reaches individuals and international media outlets on a daily basis. Because of its communications work, CAIR has become a respected and credible source for journalists and other media professionals worldwide. CAIR representatives are regularly interviewed by CNN, BBC World Service, FOX News, The Washington Post, The New York Times, and The Los Angeles Times, as well as media outlets throughout the Muslim world, such as Al-Jazeera, Al-Arabiya, the Middle East Broadcasting Company (MBC), GEO TV (Pakistan), Al-Ahram, and other international print and broadcast outlets.

98. Because of its advocacy work, CAIR makes international telephone calls and write emails to journalists worldwide.

99. CAIR's international media communications are vital to its organizational goals of enhancing understanding of Islam, facilitating inter-cultural understanding, ensuring fair and accurate portrayals of Islam and Muslims in the media, and serving as a bridge between American and the Muslim world. CAIR's communications with members of the American Muslim community are also an essential part of its organizational success. Many members of the American Muslim community

communicate, both electronically and otherwise, to their families abroad.

100. CAIR's international media communications cover a range of subjects that are likely to trigger NSA scrutiny under the Program. These subjects include Islam, extremism, post-9/11 policies, surveillance, terrorism and counterterrorism, the war in Iraq and the American Muslim community.

101. CAIR's Communications Department drafts press releases, edits opinion articles and coordinates public education campaigns related to CAIR's mission and vision. In this role, CAIR's Communications Department receives calls from journalists from all over the world who seek information or official comment from the American Muslim perspective on issues related to CAIR's press releases or official positions.

102. The Program substantially impairs the ability of CAIR to engage in communications that are vital to its mission and the ability of the American Muslim community to freely communicate abroad without the fear of being placed under unlawful surveillance.

103. As a civil rights organization, CAIR also communicates confidential information about pending civil rights cases via international telephone calls and emails.

104. For example, after two high-profile individuals, musician Cat Stevens (known as Yusuf Islam since his conversion to Islam) and world-renowned academic Tariq Ramadan, named one of TIME Magazine's Top 100 Innovators, were denied admission to the United States; CAIR personally spoke with and emailed each of the individuals abroad.

105. The members of the American Muslim community, many of whom are

members of CAIR, are engaged in efforts of commerce, education and social services with individuals and institutions in the Muslim world. The work of the American-Muslim community in being able to engage freely in commerce, education and social services in the Muslim world is a vital part of building bridges between America and the Muslim world and thus, is integral to America's national security and vital interests. The Program substantially impairs the ability of the American Muslim community to engage in communications that are vital to America's national interests.

106. The communications of CAIR, its members and the American Muslim community with individuals and journalists abroad are an integral part of the mission and vision of CAIR, specifically related to building bridges of understanding between America and the Muslim world. The possibility that the American Muslim community's international electronic communications are being intercepted by the NSA impinges their ability to communicate freely and candidly in their international communications.

CAIR-Michigan

107. CAIR-Michigan is a non-profit and non-partisan grassroots organization dedicated to enhancing the general public's understanding of Islam, protecting civil liberties, empowering American Muslims and building coalitions that promote social justice and mutual understanding.

108. Because of its advocacy and civil rights work, CAIR-Michigan makes international telephone calls and writes emails to journalists worldwide related to the large American Muslim population within the state of Michigan.

109. CAIR-Michigan's media communications are vital to its organizational goals of enhancing a better understanding of Islam, facilitating inter-cultural

understanding and ensuring fair and accurate portrayals of Islam and Muslims in the media. CAIR-Michigan's communications are also essential to the organization's communication with its members in the American Muslim community in Michigan; many of whom communicate, both electronically and otherwise, to their families abroad.

Nazih Hassan

110. Nazih Hassan is a member of CAIR-Michigan who resides in Washtenaw County, Michigan. He was born in Lebanon in 1969, and became a legal permanent resident of the United States in 2001. From 2002 to 2003, he served as the president of the Muslim Community Association of Ann Arbor. He has served as chair on MCA' Board of Directors from mid-2005 to the present. Mr. Hassan works as a technology consultant.

111. Mr. Hassan has friends and family in Lebanon, Saudi Arabia, France, Australia and Canada with whom he frequently communicates by telephone and email. Among the people with whom he communicates by phone and email are his friends Islam Almurabit and Rabih Haddad.

112. Mr. Haddad is a native of Lebanon who was educated in the United States and lived in Ann Arbor, Michigan for more than 3 years. Mr. Haddad was an active member and popular volunteer teacher at the mosque to which Mr. Hassan belongs. Mr. Haddad co-founded Global Relief Foundation (GRF) in 1993, a humanitarian organization which the federal government has accused of having provided material support for terrorism. In December 2001, Mr. Haddad was arrested for an immigration violation on the same day that the offices of GRF were raided. Mr. Haddad was held for about a year before being deported to Lebanon. As one of the two media

coordinators for the Free Rabih Haddad Committee, Mr. Hassan drafted press releases, spoke to the media and organized public demonstrations against the detention of Mr. Haddad. Mr. Hassan visits Rabih Haddad when he returns to Lebanon for vacations.

113. Islam Almurabit, the former executive director of Islamic Assembly of North America, lived in Ann Arbor for approximately 7-8 years. In 2003, after the IANA offices were raided in Ypsilanti, Mr. Almurabit was visited by the FBI and accused of being a supporter of extremism. Rather than face continual harassment by the FBI, Mr. Almurabit left the United States in 2004 or 2005 and moved to Saudi Arabia.

114. Prior to becoming aware of the NSA Program, Mr. Hassan would speak with or communicate with family members about various political topics and their opinions on current events including Islam and the war in Iraq, Islamic fundamentalists, terrorism, Osama bin Laden, al Qaeda, the war in Afghanistan and the riots in France and Australia. Mr. Hassan would also participate in online discussion groups or bulletin boards about the war in Afghanistan on foreign websites in order to learn what people from other countries were thinking and to voice objections to those who favored extremism.

115. Because of his activism in the United States, his friendship with Islam Almurabit and Rabih Haddad, and his frequent communications with numerous people in the Middle East and other foreign countries about topics likely to trigger monitoring, Mr. Hassan has a well-founded belief that his communications are currently being intercepted by the NSA under the Program.

116. The likelihood that his communications are being intercepted by the NSA under the Program impinges on Mr. Hassan's ability to communicate freely and

candidly in his calls and emails. Since learning of the NSA Program in news reports, he has refrained from talking about or emailing friends and family abroad about any topic that might trigger monitoring. He has not called his friends Islam Al-Murabit or Rabih Haddad or engaged in email communications with them about anything political for fear that such communications would somehow be taken out of context or misconstrued as support for extremism. Finally, he no longer visits websites or discussion groups where some people advocate extremism, even though his purpose in participating in the discussion groups previously had been to oppose extremism.

117. The Program also interferes with Mr. Hassan's efforts to promote peace and justice in this country. Before he became aware of the NSA Program, he felt free to engage in free and open communication with people in other countries about critical issues of the day. He gained unique insight from these conversations into U.S. foreign policy that he could not gain from the media in this country. Mr. Hassan used these communications in his political work in the United States to educate Americans about the consequences of U.S. policy abroad. Because of the Program, he is no longer engaging in substantive discussions with people abroad and therefore is not able to either gain these unique insights or share them with others.

Greenpeace

118. Plaintiff Greenpeace is an advocacy organization dedicated to combating the most serious threats to the planet's biodiversity and environment. Since 1971, Greenpeace has been at the forefront of environmental activism through non-violent protest, research, lobbying, and public education. Greenpeace has approximately 250,000 members and seven offices in the United States. Greenpeace is associated with

international Greenpeace entities, which have a presence in 39 other countries and more than 2.5 million members.

119. As part of its international environmental advocacy, Greenpeace leaders and staff engage in international communications, via telephone and email, on a daily basis. Individuals contacted include staff members of Greenpeace offices in other countries, representatives of multinational organizations, governmental officials, scientific experts, and Greenpeace members. Greenpeace communicates by telephone and email with people in the Netherlands, England, Germany, Canada, Mexico, Australia, Brazil, India and Japan.

120. Greenpeace is aware that it has been targeted for surveillance in the past by the NSA. For example, in 1992 British intelligence officials revealed to the London Observer that in the 1990s the NSA had used the word “Greenpeace” as a keyword to intercept communications outside the United States. Government documents recently obtained under the Freedom of Information Act (FOIA) reveal that Greenpeace has been the subject of surveillance by the FBI and Joint Terrorism Task Forces, whose internal documents contend that the organization is associated with “suspicious activity with a connection to international terrorism.” Documents obtained through the FOIA also indicate that the FBI has used confidential informants to obtain information about Greenpeace activities.

121. Greenpeace’s recent activities also make the organization a likely target for government surveillance. In the past several years, Greenpeace has repeatedly engaged the Bush administration through public protest and activism. In 2001, Greenpeace held public demonstrations outside the personal residences of President Bush

and Vice President Cheney, attacking the administration's environmental and energy policies. Greenpeace has also actively publicized the Bush administration's ties to the oil industry, particularly to ExxonMobil. Seventeen Greenpeace activists were arrested in 2001 in connection with a protest aimed at disrupting a "star wars" missile test at Vandenberg Air Force Base. In 2002, Greenpeace protestors chained themselves to gas pumps at ExxonMobil stations in New York and Los Angeles, carrying banners that called on the Bush administration to stop favoring the oil industry over the environment. In 2003, there were several European protests against the war in Iraq by Greenpeace activists, including one at Rota Naval Air Base in Spain. More recently, a team of international Greenpeace experts exposed the United States' military's failure to secure and contain nuclear waste facilities in Iraq.

122. Because of the nature of Greenpeace's international communications, Greenpeace's recent activities, and the U.S. government's past surveillance of Greenpeace, Greenpeace has a well-founded belief that its international communications are currently being intercepted by the NSA under the Program.

123. Greenpeace's telephone calls, emails, and other Internet communications with individuals and organizations abroad are vital to its organizational goal of addressing environmental problems of global magnitude. This mission requires free and open communication with international colleagues, members, experts, and leaders of governments and industry.

124. The Program substantially impairs the ability of Greenpeace to engage in communications that are vital to its mission. Knowledge of the Program requires Greenpeace staff to minimize the sensitive information they include in their international

electronic communications and to be more circumspect and less candid in their communications to members and others. Greenpeace also believes that people abroad are more reticent in communicating with Greenpeace because of the likelihood that their conversations will be monitored by the NSA under the Program. Greenpeace fears that the Program will enable the U.S. government to disrupt Greenpeace's lawful activities by taking preemptive action against legitimate, and peaceful, protests.

National Association of Criminal Defense Lawyers

125. The National Association of Criminal Defense Lawyers (NACDL) is a District of Columbia non-profit organization whose membership is comprised of over 13,000 lawyers and 28,000 affiliate members representing every state. The NACDL was founded in 1958 to promote study and research in the field of criminal law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases.

126. NACDL is concerned with the erosion of due process and the rights of criminal defendants and suspects generally, but particularly so with respect to the impact of the "War on Terror" upon the criminal justice system, due process, and the protections afforded by the Fourth, Fifth, and Sixth Amendments.

127. NACDL has been active with respect to those issues. NACDL has filed amicus briefs in a considerable number of cases involving the infringement of rights precipitated by the War on Terror, including in the Courts of Appeal, the Foreign Intelligence Surveillance Court of Review, and the Supreme Court. NACDL has been involved as amicus in all of the cases involving the rights of detainees, either U.S. citizens or those held at Guantanamo Bay, Cuba, in the lower and appeals courts.

128. NACDL also has at least three committees that address these issues: its Select Committee on Military Tribunals, its International Law Committee, and its Ethics Committee. Its Amicus Curiae Committee has also been intensively involved in these issues.

129. At least fifty NACDL members currently represent or have represented terrorism suspects, and many of these members regularly communicate with people outside the United States. Because of the nature of these communications, the identities of the individuals with whom they communicate, and the locations of individuals with whom they communicate, NACDL members have a well-founded belief that their communications are being intercepted by the NSA under the Program. The Program is inhibiting communications that are necessary for NACDL members to provide effective legal representation to their clients.

Joshua L. Dratel

130. Joshua L. Dratel is a nationally recognized criminal defense lawyer in New York City. Mr. Dratel is a member of NACDL's Board of Directors and Co-Chair of its Select Committee on Military Tribunals. He is also co-editor of *The Torture Papers: The Legal Road to Abu Ghraib* (Cambridge University Press: 2005).

131. Mr. Dratel currently represents a number of individuals who have been accused by the federal government of terrorism-related crimes. For example, Mr. Dratel is lead counsel for David Hicks, whom the United States government has detained as an enemy combatant at Guantanamo Bay since 2001, and who is being prosecuted by the U.S. military commission. Mr. Dratel also represents Lynne Stewart, a criminal defense lawyer accused of providing material support for terrorism. Mr. Dratel also represents

Mohamed El-Mezain in a federal prosecution charging material support for terrorism, and Wadih El-Hage, a defendant in *United States v. Usama Bin Laden* (the Embassy Bombings case), in Mr. El-Hage's pending appeal of his conviction. Mr. Dratel also represented Sami Omar Al-Hussayen, who was acquitted in federal court in Idaho of providing material support for terrorism based on the technical support he provided to web sites and discussion boards about terrorism and jihad.

132. In representing these and other clients, Mr. Dratel routinely engages in telephone and email communications with witnesses, foreign counsel, experts, journalists, and government officials in Israel, Germany, Australia, the United Kingdom, and elsewhere. He also routinely communicates with the family members of his clients, many of whom reside in other countries. These communications are essential to his effective representation of his clients.

133. In representing these and other clients, Mr. Dratel conducts research and accesses discussion boards on the Internet as an integral part of the investigatory process. This research often includes review of web sites that allegedly support terrorism and jihad, and/or discuss the issues, including qoqaz.com, azzam.com, alar.ws, palestine-info.org, islamway.com, and cageprisoners.com, among many others. Because of the charges against Sami Omar Al-Hussayen, Mr. Dratel reviewed hundreds of such web sites and discussion boards in preparation for trial. Mr. Dratel also engages in keyword searches using terms such as "Usama bin Laden," "Chechnya," "qoqaz," "Sheikh Safer al-Hawali," "Sheikh Salman al Odah," and "Hamaz."

134. Because of the nature of his communications, the identities of people with whom he communicates, and the subject matter of his online research, Mr. Dratel

has a well-founded belief that his communications are being intercepted under the Program.

135. The Program has already inhibited communications between Mr. Dratel and individuals in other countries that are necessary to provide effective legal representation to his clients. Since learning of the Program, Mr. Dratel has ceased having certain kinds of discussions over the telephone or by email for fear that the government may be monitoring his communications.

Nancy Hollander

136. Nancy Hollander, a member and past President of NACDL, is a nationally recognized criminal defense lawyer in Albuquerque, New Mexico. Ms. Hollander is co-chair of NACDL's International Affairs Committee and also in charge of recruiting volunteers to represent prisoners at Guantanamo.

137. Ms. Hollander currently represents organizations and individuals who have been accused by the federal government of terrorism-related crimes. For example, Ms. Hollander represents Holy Land Foundation and its Executive Director Shukri Abu Baker, who are currently under indictment in Dallas, Texas charged with providing material support to a terrorist organization. She also represents Mohammedou Ould Salahi, who the federal government has declared an enemy combatant and who has been detained at Guantanamo Bay since 2002. She also represented Fawaz Damrah, who was charged and convicted in Ohio of naturalization crimes but whom the federal government attempted to link to Sami Al-Arian, a professor accused and recently acquitted in Florida of terrorism-related crimes.

138. The nature of Ms. Hollander's legal practice requires her to communicate regularly by email and telephone with individuals outside the United States. These communications are essential in providing effective representation to her clients. For example, in representing these and other clients, Ms. Hollander routinely communicates by telephone and email with witnesses, foreign counsel, experts, journalists, government officials and political figures in Israel, Gaza, the West Bank, Egypt, and other countries in the Middle East, as well as in Mauritania.

139. In representing these and other clients, Ms. Hollander also conducts research on the Internet about terrorism, religion, and politics in the Middle East and South Asia, and also participates in Internet discussions on these topics. Ms. Hollander routinely searches web sites using key words such as " Hamas," "Palestinian Islamic Jihad," "muhajadin," and "suicide bomber." This research is a necessary component of the investigatory process.

140. Because of the nature of her communications, the identities of people with whom she communicates, and the subject matter of her online research, Ms. Hollander has a well-founded belief that his communications are being intercepted by the NSA under the Program.

141. The Program has already inhibited communications between Ms. Hollander and individuals in the Middle East that are necessary to provide effective legal representation to her clients. Since learning of the Program, Ms. Hollander has ceased having certain kinds of discussions over the telephone or by email for fear that the government may be monitoring her communications. Ms. Hollander has decided that she will no longer communicate by phone or email about any strategic or privileged

matters with her clients charged in terrorism related cases, or with witnesses, experts, potential experts and co-counsel outside the United States. In one current case, Ms. Hollander is planning an expensive trip to obtain information that she would have previously obtained via telephone and email.

William W. Swor

142. William W. Swor is a member of the NACDL, and a member of the Board of Directors of the Criminal Defense Attorneys of Michigan. He maintains a private practice of law in Detroit, Michigan. His practice is primarily in the areas of federal criminal defense and immigration law.

143. Mr. Swor has represented, currently represents and expects to represent in the future, individuals who were investigated and or prosecuted under one or more of the federal terrorism-related statutes. For example, Mr. Swor represents Abdel-Ilah Elmardoudi who was wrongfully accused by the United States of providing material aid in support of terrorism. Mr. Swor also represents Mahmoud Kourani who was accused by the United States of providing material aid to Hezbollah, in Lebanon. Mr. Swor has other matters pending, both criminal and immigration matters, in several federal districts in which his clients are being investigated or prosecuted under one or more of the federal terrorism-related statutes.

144. In representing these and other clients, Mr. Swor conducts research on the Internet about terrorism, religion and politics in the Middle East, Eastern Europe, Africa and the Caucasus Mountain region. This research includes review of sites that support terrorism and/or organizations that the United States has declared Foreign Terrorist Organizations (FTOs). This research is a necessary component of his

preparation of his cases. Based upon discovery provided by the United States in pending matters, he will continue to need to refer to these sites for information.

145. The nature of Mr. Swor's legal practice also requires him to communicate by telephone with individuals outside of the United States, including individuals whose communications are likely to have been intercepted under the Program. These individuals are witnesses, potential experts, journalists, and others who are located in the Middle East, e.g. Lebanon, and Jordan, as well as western European countries such as France and England. These communications are essential in providing effective representation to his clients.

146. Mr. Swor has a well-founded belief that his communications are being intercepted by the NSA under the program. The Program has already inhibited communications between Mr. Swor and individuals in the Middle East that are necessary to provide effective legal representation to his clients. Since learning of the Program, Mr. Swor has avoided having certain kinds of discussions over the telephone or email for fear that the government may be monitoring his communications. Mr. Swor believes that he will now have to schedule one or more trips overseas to interview witnesses and to obtain information that he would have previously been able to obtain via telephone and email communications.

James Bamford

147. Plaintiff James Bamford, of Washington, D.C., is an award-winning and bestselling author and journalist. He is one of the world's leading experts on U.S. intelligence generally and the National Security Agency specifically. Mr. Bamford is the author of *A Pretext for War: 9/11, Iraq, and the Abuse of America's Intelligence*

Agencies (Doubleday, 2004), *Body of Secrets: Anatomy of the Ultra-Secret National Security Agency* (Doubleday, 2001), and *The Puzzle Palace: A Report on NSA, America's Most Secret Agency* (Houghton Mifflin, 1982). Mr. Bamford has written extensively on national security issues for a range of newspapers and magazines, including investigative cover stories for *The New York Times Magazine*, *The Washington Post Magazine*, and *The Los Angeles Times Magazine*. From 1989 -1998, he was the Washington investigative producer for ABC's *World News Tonight* with Peter Jennings. In 2002, he was a distinguished visiting professor of National Security at the Goldman School of Public Policy, University of California, Berkeley.

148. As an expert on intelligence, Mr. Bamford has testified before committees of both the Senate and House of Representatives as well as the European Parliament in Brussels and the International Criminal Tribunal for the former Yugoslavia. He has also been a guest speaker at the Central Intelligence Agency's Senior Intelligence Fellows Program, the National Security Agency's National Cryptologic School, the Defense Intelligence Agency's Joint Military Intelligence College, the Pentagon's National Defense University and Air War College, and the Director of National Intelligence's National Counterintelligence Executive.

149. Mr. Bamford first experienced the impact of illegal NSA eavesdropping on Americans, and the lengths to which the U.S. government will go to prevent disclosure of its spying programs, thirty years ago. As Mr. Bamford was writing *The Puzzle Palace*, he discovered that the Justice Department in 1976, during the Ford administration, began a secret criminal investigation into widespread illegal domestic eavesdropping by the NSA. Mr. Bamford filed a request under the Freedom of

Information Act for documents dealing with that investigation. Several hundred pages of documents were eventually released to him in 1979. The documents showed that the FBI questioned senior NSA officials about the possibility of their having violated federal criminal laws by engaging in warrantless eavesdropping of American citizens. “The investigation,” said the documents, “uncovered 23 different categories of questionable activities.” However, because of the secrecy of the operations, and the fact that law was undefined in this area, the Justice Department decided against prosecution and instead recommended that new laws be created to outlaw this type of activity.

150. Shortly after President Ronald Reagan took office, the Justice Department, at the request of the NSA, notified Mr. Bamford that the documents had been “reclassified” as top secret and demanded their return. When Mr. Bamford refused, saying that they had been properly declassified and released to him by the Carter administration, he was threatened with prosecution. Mr. Bamford then cited the presidential executive order on secrecy which stated that once a document had been declassified, it *cannot* be reclassified. As a result, President Reagan changed the executive order to indicate that once a document has been declassified it *can* be reclassified. However, because the order could not be applied retroactively, the new executive order could not be applied to Mr. Bamford and the information was subsequently published in *The Puzzle Palace*.

151. During that period, sources necessary to Mr. Bamford’s investigative journalism were much less willing to communicate with him due to the likelihood that his communications were being intercepted by the NSA. The NSA had previously placed another writer, David Kahn, on its watch list, and intercepted his communications, as he

was writing his history of cryptology, *The Codebreakers*. According to the Senate Select Committee on Intelligence, the agency also considered undertaking “clandestine service applications” against the author, which apparently meant anything from physical surveillance to conducting a “surreptitious entry” into Kahn’s New York home.

152. Mr. Bamford’s recent work has again made it likely that his communications are being intercepted by the NSA. For example, in the fall of 2001, Mr. Bamford received a book contract from Doubleday Publishing Company to write *A Pretext for War*, which documents the intelligence mistakes that led to the nation’s failure to prevent the 9/11 attacks and the Bush administration’s subsequent misuse of intelligence to sell preemptive war to the American people.

153. Since the fall of 2001, Mr. Bamford has also written more than two dozen articles, reviews and opinion pieces on intelligence, 9/11, and the wars in Iraq and Afghanistan. These include “Where Spying Starts and Stops” (*The New York Times*, January 2006), “The Agency That Could Be Big Brother” (*The New York Times*, December 2005), “The Labyrinthine Morass of Spying in the Cold War” (*The New York Times*, July 2003), “This Spy For Rent” (*The New York Times*, June 2004), “How To De-Centralize Intelligence” (*The New York Times*, November 2002), “War of Secrets” (*The New York Times*, September 2005), “Washington Bends The Rules” (*The New York Times*, September 2002), “A Former CIA Cowboy and his Disillusioning Ride” (*The New York Times*, September 2002), “We’re Watching Them” (*The Washington Post*, February 2005), “Sowing the Whirlwind” (*The Washington Post*, February 2004), “A Look Over My Shoulder” (*The Washington Post*, April 2003), “Shadow Warriors” (*The Washington Post*, December 2002), “Strategic Thinking” (*The Washington Post*,

September 2002), “The Wrong Man” (The Washington Post, January 2002), “Intelligence Failures” (The Washington Post, June 2002), “Maintain CIA’s Independence” (USA Today, October 2002), “Untested Administration Hawks Clamor for War” (USA Today, September 2002), “Bush Wrong to Use Pretext as Excuse to Invade Iraq” (USA Today, August 2002), “Linguist Reserve Corp Answers Terror Need” (USA Today, July 2002), “Secret Warriors: The Great Game” (The Los Angeles Times, May 2004), “Secrets on High” (The Los Angeles Times, March 2003), “The Man Who Sold The War” (Rolling Stone, December 2005) and “Breeding Terror: The Intelligence Community Analyzes a Counterproductive War” (The American Conservative, March 2005). Mr. Bamford also is a contributing editor for Rolling Stone and has served on the USA Today Board of Contributors.

154. Communicating with individuals in Iraq, Afghanistan, and elsewhere in the Middle East via email and telephone is a vital part of Mr. Bamford’s work as an author and journalist. Mr. Bamford’s sources in the Middle East include people working for the United States military and intelligence agencies, intelligence officials in other countries, intelligence experts, and foreign journalists specializing in writing on intelligence.

155. Mr. Bamford’s email communications include discussions of the NSA, Central Intelligence Agency, military strategies related to the wars in Iraq and Afghanistan, and the 9/11 attacks and other terrorist attacks. The people with whom Mr. Bamford has communicated, the locations of people with whom he has communicated, and the content of his communications are all likely to have triggered scrutiny by the NSA under the Program.

156. Mr. Bamford also frequently communicates by telephone and email with journalists in the Middle East, both as part of his research and because he is often interviewed as an expert on U.S. intelligence. For example, he has appeared several times on Al-Jazeera, the leading television network in the Arab world.

157. As part of his research, Mr. Bamford also frequently visits web sites that are likely to trigger NSA scrutiny. For example, Mr. Bamford has researched web sites about terrorism, jihad, Osama bin Laden, al Qaeda, Islamic fundamentalism, Saddam Hussein, weapons of mass destruction, and signals intelligence. One web site, Jihad Unleashed, includes translations of Osama bin Laden's communications. Some of these web sites express support for terrorism.

158. Mr. Bamford's ability to research and write about the NSA, intelligence, and the war on terror is seriously compromised by the Program. Because the Program substantially increases the likelihood that his communications are being intercepted by the NSA, Mr. Bamford is less able to communicate freely and candidly in his international calls and emails. In addition, because of the Program, Mr. Bamford believes that sources who have first-hand knowledge about intelligence failures and abuses are less willing to engage in communications with him.

Larry Diamond

159. Larry Diamond is a senior fellow at the Hoover Institution, Stanford University, and founding coeditor of the Journal of Democracy. He is also codirector of the International Forum for Democratic Studies of the National Endowment for Democracy. At Stanford University, he is professor by courtesy of political science and sociology and coordinates the democracy program of the Center on Democracy,

Development, and the Rule of Law. During 2002–03, he served as a consultant to the U.S. Agency for International Development (USAID) and was a contributing author of its report *Foreign Aid in the National Interest*. Currently he serves as a member of USAID's Advisory Committee on Voluntary Foreign Aid. Professor Diamond has also advised and lectured to the World Bank, the United Nations, the State Department, and other governmental and nongovernmental agencies dealing with governance and development.

160. During the first three months of 2004, Professor Diamond served as a senior adviser on governance to the Coalition Provisional Authority in Baghdad. He is now lecturing and writing about the challenges of post-conflict state building in Iraq, and the challenges of developing and promoting democracy around the world, with a particular focus on the Middle East and Africa. Professor Diamond has worked with a group of Europeans and Americans to produce the *Transatlantic Strategy for Democracy and Human Development in the Broader Middle East*, published in 2004 by the German Marshall Fund of the United States. During 2004–5, he has been a member of the Council on Foreign Relations' Independent Task Force on United States Policy Toward Arab Reform.

161. Professor Diamond is the author of numerous books, including *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (Times Books, 2005). His recent edited books include *Islam and Democracy in the Middle East* (with Marc F. Plattner and Daniel Brumberg) and *Assessing the Quality of Democracy* (with Leonardo Morlino).

162. Professor Diamond's work requires him to communicate by email, and occasionally by telephone, with advocates of democracy in the Middle East, Asia, and

Africa. For example, Professor Diamond corresponds by email with Saad Eddin Ibrahim, a leading advocate of democratic reform in Egypt, and with Professor Maye Kassem, a political scientist at the American University in Cairo. Professor Diamond corresponds with Adel Abdellatif of the United Nations Development Program in Beirut. Professor Diamond also corresponds with advocates for democratic reform in many other countries, including Iran, the Palestinian Authority, Pakistan, China, the Philippines, Nigeria, Kenya, and Uganda.

163. Professor Diamond has a well-founded belief that his communications are being intercepted by the Program.

164. Some of Professor Diamond's correspondence with individuals in the Middle East and Asia concerns political and human rights issues that are extremely sensitive. For example, Professor Diamond has corresponded with Sana Baloch, a Pakistani Senator, about human rights issues in Baluchistan. Professor Diamond believes that Senator Baloch would not have provided him with this information had he believed that communications with Professor Diamond were monitored by the United States government. Professor Diamond believes that the existence of the Program makes it less likely that individuals in Afghanistan, Pakistan, Egypt, China, and elsewhere in the Middle East and Asia will provide him with sensitive information over email or by telephone in the future.

165. Because Professor Diamond is a well-known scholar of democratic reform, he is occasionally contacted unsolicited by individuals who live under repressive governments and have complaints about their governments' policies. Professor Diamond believes that the Program makes it substantially less likely that such individuals will

contact him. Professor Diamond believes that this is particularly true of individuals who live under repressive governments that have close relations with the United States, such as Pakistan, Egypt, and Kazakhstan, because these individuals will reasonably fear that their communications may ultimately be provided by the United States to their own governments.

166. Professor Diamond's ability to advocate and advise on democratic reform in the Middle East and Asia depends in part on the willingness of political dissidents to contact him, to consult with him, and to provide him with information about their own governments' policies. Professor Diamond believes that the Program inhibits the exchange of information and ideas among advocates of democratic reform and the victims of human rights abuses and defenders of human rights, and thereby compromises his ability to study the progress of democratic reform and support those in the Middle East and Asia who advocate change.

167. Additionally, Professor Diamond is concerned about the implications of the program for academic freedom. He periodically has undergraduate and graduate students who travel to the Middle East, Asia, and Africa to conduct research on sensitive political questions and who need to be in touch with him by email for advice and coordination while in the field. For example, this past summer, one of his Stanford undergraduate advisees, Omar Shakir, worked for him as a research assistant in Egypt interviewing opposition activists, intellectuals, and advocates of democratic change. Shakir sent weekly reports back to Professor Diamond and they communicated by email while he was in Egypt. Professor Diamond believes the Program inhibits the conduct and coordination of overseas research and the supervision of student research by impairing

the ability to communicate freely and responsibly with his students and assistants overseas, who often give their interviewees pledges of strict confidentiality.

Christopher Hitchens

168. Christopher Hitchens is a reporter and author based in Washington, D.C. He is a prominent and controversial commentator who is vocal in his support for the military interventions in Iraq and Afghanistan. Mr. Hitchens writes frequently on the politics of the Middle East. Many of his articles focus on understanding the role and influence of Islamic fundamentalism in the region. He also probes the success of United States policy in assuaging the threat to security posed by Muslim terrorists harbored in the Middle East and West Asia.

169. Mr. Hitchens' reportage and analysis appear in numerous publications. He has published in Harpers, The Spectator, The Nation, New York Newsday, and Atlantic Monthly. He currently is a frequent contributor to Slate and Vanity Fair. Mr. Hitchens writes a regularly featured column for Slate called Fighting Words, which he used to voice his strong support for the allied military actions in Iraq and Afghanistan. He has traveled throughout the Middle East on behalf of Vanity Fair in order to write a series of articles describing the political climate in various countries. Mr. Hitchens is also a best-selling author of several books. In 2003, he published *A Long Short War: The Postponed Liberation of Iraq*, a collection of essays analyzing arguments for and against the war in Iraq. In 2005, he contributed an essay to Thomas Cushman's compilation *A Matter of Principle: Humanitarian Arguments for War in Iraq*.

170. Mr. Hitchens' work requires him to maintain frequent contact with sources in the Middle East and Western Asia. Such communications were necessary for

him to research his Vanity Fair articles on political conditions in various Middle East states. These articles include “On the Frontier of Apocalypse” on Pakistan (January 2002), “The Maverick Kingdom” on Qatar (December 2002), “Saddam’s Long Good-Bye” on Kuwait (June 2003), “A Prayer for Indonesia” (January 2004), “Afghanistan’s Dangerous Bet” (November 2004), and “Iran’s Waiting Game” (July 2005). Mr. Hitchens’ upcoming book and continuing journalism will involve contact with, and visits to, the Middle East and Western Asia.

171. As part of his work, Mr. Hitchens regularly exchanges emails and telephone calls with individuals in Iraq, Iran, Afghanistan, Pakistan, India, Indonesia, Qatar and Kuwait. In a typical week, Mr. Hitchens hears from individuals in several of these countries. For example, Mr. Hitchens has spoken with Dr. Masuda Jalal, the only woman who ran for president of Afghanistan; Hossein Khomeini, a cleric whose grandfather overthrew the Iranian monarchy in 1979; Ali Mohammed Kamal, a TV marketing director for Al Jazeera; and Sardar Sikander Hayat Khan, the prime minister of Pakistani Kashmir. Mr. Hitchens’ communications to the Middle East and Western Asia include contacting journalists of a variety of nationalities and individuals in the United States military and diplomatic corps. He also contacts those who are actively hostile to the United States military intervention in Iraq and Afghanistan and the United States more generally. Because of the subject matter of his reporting, many of Mr. Hitchens’ communications involve discussions of Islamic fundamentalism, terrorism, jihad, Osama bin Laden, al Qaeda, and Saddam Hussein.

172. Since well before 2001, but more regularly and frequently since then, Mr. Hitchens’ work has required him to travel to the Middle East and Western Asia.

Since 2001, the countries he has visited include Iraq, Iran, Afghanistan, Pakistan, India, Indonesia, Qatar and Kuwait. Travel is an important element of Mr. Hitchens' work, as his reporting offers detailed, first-hand accounts of conditions in countries few Westerners have an opportunity to visit. For instance, Mr. Hitchens traveled throughout Iran to prepare "Iran's Waiting Game" (July 2005 Vanity Fair). He visited Tehran, Qom, and Mashhad to gain a sense of life under Iran's theocratic government. In researching "Afghanistan's Dangerous Bet" (November 2004 Vanity Fair), Mr. Hitchens ventured from Kabul to the provincial capital of Herat to witness the run-up to Afghanistan's first democratic elections from different vantage points. Mr. Hitchens visited Qatar to report on its relatively free society, a report in which he devoted much attention to Qatar-based media outlet Al Jazeera (The Maverick Kingdom, December 2002 Vanity Fair). While traveling, Mr. Hitchens communicates regularly by telephone and email with colleagues, editors, and sources in the United States.

173. Because of the nature of his communications with people in the Middle East, the identities of those with whom he communicates, and the subject matter of his online research, Mr. Hitchens has a well-founded belief that his communications are being intercepted by the NSA under the Program. Mr. Hitchens believes that free and open communication with his sources is an essential element of his work as a journalist. Given the sensitive nature of his work, Mr. Hitchens must assure some of his sources that their communications are kept in strict confidentiality. The Program undermines Mr. Hitchens' ability to make that assurance. As a result, individuals are less forthcoming in their conversations with him, and may cut off communications completely. In addition, the likelihood that Mr. Hitchens' international communications are being intercepted by

the NSA under the spying program impinges his own ability to communicate freely and candidly with his sources and others, to the detriment of his effectiveness as an investigative journalist.

Tara McKelvey

174. Plaintiff Tara McKelvey is a senior editor at The American Prospect and a contributing editor to Marie Claire. Her articles have appeared in those two magazines as well as in The Nation, USA Today, Chicago Tribune, and The New York Times.

175. Ms. McKelvey has written extensively about the Middle East, including articles about Iraqi detainees held in United States custody, about women's issues in Iraq, and about the United States military in Iraq. She is working on a book about U.S. legal efforts to fight torture and is editing an upcoming anthology about women and torture.

176. Communicating with individuals in Iraq, Jordan, and Syria via telephone and email is a vital part of Ms. McKelvey's work as a journalist. Since October 2004, Ms. McKelvey regularly emails people in Iraq and Jordan as part of her research. For example, she made frequent calls to individuals in Iraq, Jordan, and Syria during November and December 2004 and January, November, and December 2005. Ms. McKelvey's sources in the Middle East include individuals working for the United States military, Iraqi soldiers, nongovernmental agencies, bankers, school administrators, journalists, activists, human-rights workers, and others.

177. Among Ms. McKelvey's many sources in the Middle East are individuals she believes are likely to have been the targets of United States government surveillance because they have been arrested or investigated by United States or coalition

forces, have been suspected of aiding insurgents, have ties to the former Iraqi regime, or are critical of the United States presence in Iraq.

178. For example, in December 2004, for an article for *The American Prospect*, Ms. McKelvey interviewed by telephone Khadeja Yassen in Baghdad. Yassen was a ranking member of the Baath Party and is the sister of former vice president Taha Yassin Ramadan, who in turn was included in the United States military's playing card deck of the 55 most wanted Iraqis. Yassen had her house raided by United States forces in 2003 and was thereafter arrested.

179. Also in December 2004, for an article for *The American Prospect*, Ms. McKelvey interviewed Saja, an engineer in her thirties, by telephone at her home in Damascus. Ms. McKelvey also emailed her. Saja is, according to an American spokesman for coalition forces in Iraq, believed to be a former mistress of Saddam Hussein.

180. As part of her journalistic research, Ms. McKelvey visits numerous websites hosted in the Middle East that include aggressive anti-American propaganda.

181. Because of her journalistic contacts with individuals in Iraq who have been arrested or investigated by United States or coalition forces, who have been suspected of aiding insurgents, who have ties to the former Iraqi regime, or who are critical of the United States presence in Iraq, Ms. McKelvey has a well-founded belief that her international communications are being intercepted by the NSA under the Program.

182. The Program substantially impairs Ms. McKelvey's ability to communicate openly with sources in the Middle East that are essential to her work as a

journalist. Many of Ms. McKelvey's most important sources have spoken to her in the past only with great trepidation: they fear that other Iraqis will kill them for speaking with an American and, at the same time, they fear being arrested (in some cases, re-arrested) by United States or coalition forces who suspect them of being involved in insurgent activities. Ms. McKelvey believes that the Program is diminishing the willingness of her sources to communicate with her and may deter them from communicating with her altogether for fear that their communications may be intercepted.

Barnett R. Rubin

183. Barnett R. Rubin is Director of Studies and Senior Fellow at the New York University Center on International Cooperation ("CIC"). The CIC promotes policy research and international consultations on multilateral responses to transnational problems. He is the chair of the Conflict Prevention and Peace Forum (CPPF), a program of the Social Science Research Council in New York, that provides the United Nations with confidential consultations with experts on issues related to conflict and peace around the world. He is also a member of the board of Gulestan Ariana Ltd., a commercial company registered in Afghanistan to manufacture essential oils, hydrosols, and related products, with offices and operations in Kabul and Jalalabad. Previously Professor Rubin was the Director of the Center for Preventive Action of the Council on Foreign Relations, of which he is now an advisory board member. He was a member of the UN delegation to the UN Talks on Afghanistan in Bonn, Germany, in November-December 2001. Professor Rubin advised the United Nations in Afghanistan during the process of drafting the constitution of the Islamic Republic of Afghanistan in 2003. Professor Rubin

is a member of the advisory board of the Central Eurasia Program of the Open Society Institute, overseeing programs in the Caucasus, Central Asia, Afghanistan, Iran, and Pakistan.

184. Professor Rubin's work and research concerns conflict prevention and peace building in Afghanistan and the surrounding region. Professor Rubin is regularly consulted as an expert on Afghanistan, Central Asia, and South Asia and regularly works in collaboration with officials of Afghanistan, the United Nations, the United States, and other governments and international organizations on development and institution-building projects. In his work with CPPF he works on issues related to conflict prevention in Central Asia and travels to the area. As a board member of Gulestan, he communicates with individuals in Kabul and Jalalabad, and travels to inspect the company's operations in Jalalabad and elsewhere in Nangarhar province, including some areas close to Tora Bora. He has authored and edited numerous books and articles about Afghanistan and conflict prevention, including *The Fragmentation of Afghanistan* (New Haven: Yale University Press, 2002 (second edition), 1995 (first edition)), *The Search for Peace in Afghanistan* (New Haven: Yale University Press, 1995), and *Blood on the Doorstep: The Politics of Preventing Violent Conflict* (New York: The Century Foundation and the Council on Foreign Relations, 2002).

185. Professor Rubin communicates by email and telephone with individuals in Afghanistan almost every day. Professor Rubin frequently communicates by telephone with Afghan government officials in Kabul. In connection with Gulestan's activities he speaks to individuals in Jalalabad. In connection with his work for CPPF and OSI, Professor Rubin communicates with individuals in Central Asia. Professor Rubin

communicates regularly by telephone with Amrullah Saleh, the Director of the National Directorate of Security (Afghanistan's intelligence agency); with Ishaq Nadiri, President Hamid Karzai's Minister Advisor of Economic Affairs; with Adib Farhadi, Director of the Afghanistan Reconstruction and Development Services; with Ali Ahmad Jalali, when he was Minister of the Interior of Afghanistan; with Dr. Ashraf Ghani, Chancellor of Kabul University and former Minister of Finance of Afghanistan; with engineer Mohammad Eshaq, former director of Afghan Radio and Television; and with many others.

186. Professor Rubin also communicates frequently by telephone with United Nations officials in Kabul, including Lakhdar Brahimi, when he was the United Nations Special Representative of the Secretary General for Afghanistan (SRSG); Jean Arnault, the current SRSG; Ameerah Haq, Deputy SRSG; Chris Alexander, Deputy SRSG; and Eckart Schwieck, Mr. Arnault's Executive Assistant.

187. In connection with his work on Afghanistan and South Asia, Rubin frequently communicates by email and telephone with colleagues such as Ahmed Rashid, a journalist and author residing in Lahore, Pakistan. He frequently communicated in the past several years with a Pakistani journalist named Abubaker Saddique, who worked for the International Crisis Group, the Integrated Regional Information Network (Central Asia) of the United Nations and who also worked for CIC as a consultant. These communications concerned particularly sensitive matters, such as the Afghan-Pakistani border areas, a project on which they are now working together.

188. In connection with his work for CPPF and OSI, Professor Rubin has traveled to Tajikistan and other Central Asian countries and engages in email and

telephone communications with journalists in the area as well as with OSI staff, such as Zuhra Halimova, director of the OSI office in Dushanbe, Tajikistan.

189. In connection with his work, Professor Rubin also frequently communicates with Afghan government officials and others by email. For example, between August 2005 and the present, Professor Rubin has exchanged numerous emails with Afghan government officials who are drafting the Afghan National Development Strategy, on which Professor Rubin works as an advisor. Professor Rubin has also communicated by email with Amrullah Saleh, the Director of the Afghan intelligence agency. On occasion, Professor Rubin has also exchanged emails with individuals, including government officials, in Iran. These have included former deputy foreign minister Abbas Maleki, editor of the Hamshahri newspaper and director of the Caspian Studies Institute; and Dr. Sayed Kazem Sajjadpour, former director of the Institute for Political and International Studies; and Kian Tadjbakhsh, Senior Research Fellow, Cultural Research Bureau, Tehran. Rubin traveled to Tehran for a conference in December 2003, and in conjunction with that trip made numerous telephone calls and emails.

190. Because of the nature of Professor Rubin's communications, and the identities and locations of those with whom he communicates, Professor Rubin has a well-founded belief that his communications are being intercepted by the NSA under the Program.

191. Professor Rubin believes that free and open communication with individuals in Afghanistan and elsewhere in the Middle East and Asia is essential to his work as a scholar. A large part of Professor Rubin's work involves exchanging ideas and

information with people in Afghanistan and elsewhere in the Middle East and Asia. The ideas are sometimes controversial and the information is sometimes sensitive. Professor Rubin believes that the Program inhibits the free exchange of controversial ideas and sensitive information and thereby compromises his ability to engage in scholarship and to work collaboratively with individuals in Afghanistan and elsewhere in the Middle East and Asia.

CAUSES OF ACTION

192. The Program violates plaintiffs' free speech and associational rights guaranteed by the First Amendment.

193. The Program violates plaintiffs' privacy rights guaranteed by the Fourth Amendment.

194. The Program violates the principle of separation of powers because it was authorized by President Bush in excess of his Executive authority under Article II of the United States Constitution and is contrary to limits imposed by Congress.

195. The Program violates the Administrative Procedures Act because the NSA's actions under the Program exceed statutory authority and limitations imposed by Congress through FISA and Title III; are not otherwise in accordance with law; are contrary to constitutional right; and are taken without observance of procedures required by law.

PRAYER FOR RELIEF

WHEREFORE plaintiffs respectfully requests that the Court:

1. Declare that the Program is unconstitutional under the First and Fourth Amendments;

2. Declare that the Program violates the principle of separation of powers;
2. Declare that the Program violates the Administrative Procedures Act;
3. Permanently enjoin defendants from utilizing the Program;
4. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412;
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

ANN BEESON

Attorney of Record

JAMEEL JAFFER

MELISSA GOODMAN (*admission pending*)

CATHERINE CRUMP (*admission pending*)

National Legal Department

American Civil Liberties Union

Foundation

125 Broad Street, 18th Floor

New York, NY 10004-2400

(212) 549-2500

MICHAEL J. STEINBERG

KARY L. MOSS

American Civil Liberties Union Fund

of Michigan

60 West Hancock

Detroit, MI 48201-1343

(313) 578-6800

January 17, 2006