

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTER FOR CONSTITUTIONAL RIGHTS,
TINA M. FOSTER, GITANJALI S. GUTIERREZ,
SEEMA AHMAD, MARIA LAHOOD,
RACHEL MEEROPOL,

Plaintiffs,

v.

GEORGE W. BUSH,
President of the United States;
NATIONAL SECURITY AGENCY,
LTG Keith B. Alexander, Director;
DEFENSE INTELLIGENCE AGENCY,
LTG Michael D. Maples, Director;
CENTRAL INTELLIGENCE AGENCY,
Porter J. Goss, Director;
DEPARTMENT OF HOMELAND SECURITY,
Michael Chertoff, Secretary;
FEDERAL BUREAU OF INVESTIGATION,
Robert S. Mueller III, Director;
JOHN D. NEGROPONTE,
Director of National Intelligence,

Defendants.

Case No. 06-cv-313

Judge Gerard E. Lynch
Magistrate Judge Kevin N. Fox

**AFFIRMATION OF
WILLIAM GOODMAN
IN SUPPORT OF
PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

I, William Goodman, an attorney admitted to practice before this Court, and the Courts of the State of New York, hereby affirm under penalty of perjury as follows:

1. I am the Legal Director of the Center for Constitutional Rights ("CCR"), a nonprofit public interest law firm in New York. I, along with Shayana Kadidal, a staff attorney at CCR, David Cole, a CCR board member, and Michael Avery of the National Lawyers Guild are counsel for the Plaintiffs in this action.

2. I am a member of the bars of the State of New York and the United States District Court for the Southern District of New York.

3. I have spent the last 40 years prosecuting civil rights and civil liberties litigation. For 33 of those years I was in private practice, as an associate and then partner at Goodman, Eden, Eden, Millender, and Bedrosian, in Detroit, Michigan, and from 2003 to 2005 as a partner at Moore & Goodman, LLP in New York City.

4. From 1998-2003, I was Legal Director of CCR. I returned to CCR as Legal Director in 2005. In my capacity as legal director, I am responsible for directly supervising the ten attorneys and four legal workers in CCR's Manhattan office, as well as the work of a large number of volunteers and cooperating attorneys worldwide. I directly supervise all of the named individuals who are Plaintiffs in this action, and am familiar with their work on the cases described herein. As supervisor of the legal staff, my responsibilities include setting policies regarding compliance with our professional responsibilities as a law office. The Legal Director bears primary responsibility for selecting cases and ensuring their effective litigation, and also participates in the overall direction and administration of the office with particular attention to litigation needs and budget.

5. The Center for Constitutional Rights is a national not-for-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements and activists in the South, CCR is committed to the creative use of law as a positive force for social change. CCR considers litigation to be not merely a tool for advancing precedent but also a fulcrum around which to organize mass movements for political change and a means of giving voice to the aspirations of oppressed

peoples. Over the past 39 years CCR has litigated cutting-edge cases in the areas of racial justice, government misconduct, social and economic rights, women's rights, separation of powers, and international human rights. Among these is the landmark wiretapping case *United States v. United States District Court (Keith)*, 407 U.S. 297 (1972).

6. CCR and the individual lawyers employed at the Center have served as counsel in many cases alleging violations of constitutional and human rights as a result of the detention and interrogation practices of the current administration in connection with anti-terrorism policies and practices. For instance, the Center for Constitutional Rights litigated, with others, the Supreme Court case challenging the indefinite detention of foreign nationals at Guantánamo Bay Naval Station, *see Rasul v. Bush*, 542 U.S. 466 (2004), and continues to coordinate the representation of approximately 500 Guantánamo Bay detainees in conjunction with some 500 *pro bono* attorneys across the country. CCR is also co-counsel on a civil suit brought on behalf of four released former Guantánamo detainees, *Rasul v. Rumsfeld*, 04-cv-1864 (RMJ) (D.D.C.). CCR has also developed a large group of *pro bono* translators and interpreters, and local contacts among legal and human rights organizations across the world, and we continue to lead and coordinate efforts among these persons. The overwhelming majority of clients in these cases are represented by CCR *pro bono*, with no expectation that they will ever be in a position to pay even the out-of-pocket litigation expenses CCR incurs in the course of their representation.

7. Plaintiff attorneys Gitanjali S. Gutierrez and Tina Foster communicate regularly with family members of the detainees (many of whom serve as next friends to detainees in the habeas proceedings), potential witnesses in the habeas cases, human rights workers and officials of foreign governments located in the detainees' home countries, former detainees who have been released and returned to their home countries, and cooperating counsel, located both inside

and outside of the United States, who are litigating individual cases. Plaintiff Foster also routinely is required to communicate with translators and interpreters located overseas in the course of her work on these cases. Some of the people Plaintiffs Foster and Gutierrez communicate with in connection with their legal work either have officially been deemed by the United States as “enemy combatants,” and therefore fit within the criteria articulated by Attorney General Gonzales for targets of the NSA Surveillance Program (described in our complaint in this action), or are reasonably likely to be viewed by the United States as fitting within those criteria. For instance, Ms. Gutierrez regularly communicates by telephone with Moazzam Begg and Feroze Abassi, both of whom are released former Guantánamo detainees who were not only designated as “enemy combatants” but also were among the first six Guantánamo detainees designated (in July 2003) for trial by military commission. Both men currently live in England.

8. Plaintiff Seema Ahmad is a legal worker at the Center whose primary job responsibilities also involve coordination of the habeas petitions for Guantánamo detainees. Ms. Ahmad communicates regularly with family members of the detainees, cooperating counsel, human rights lawyers located overseas, former detainees, and other individuals in relation to these cases. Some of the people she communicates with in connection with her legal team duties either have officially been deemed by the United States as “enemy combatants,” and therefore fit within the criteria articulated by Attorney General Gonzales for targets of the NSA Surveillance Program, or are reasonably likely to be viewed by the United States as fitting within those criteria. For instance, Ms. Ahmad regularly communicates by telephone and email with Moazzam Begg.

9. Plaintiffs Gutierrez, Foster and Ahmad participate in frequent training and joint strategy sessions with other counsel on the Guantánamo cases. These meetings generally involve

some lawyers attending in person, and others conferencing in via videoconference technology or telephonic conference calls. Co-counsel or other participants frequently use such means to call into these meetings from overseas. Counsel on the Guantánamo cases also rely heavily on an email listserv and a private extranet site (accessible via the Internet) to coordinate their efforts in the cases.

10. Plaintiff Maria LaHood is a staff attorney at the Center for Constitutional Rights responsible for litigating a number of cases in CCR's International Human Rights docket, including *Arar v. Ashcroft*, 04-CV-0249 (DGT)(VVP) (E.D.N.Y. filed January 22, 2004), a case on behalf of a Syrian-born Canadian citizen detained in New York while changing flights at JFK Airport and sent by United States officials to Syria to be tortured. In the course of her work on that case she communicates frequently by phone and e-mail with the plaintiff, Maher Arar, who lives in Canada (and is barred from entering the United States until at least October 2007), as well as with others abroad. The United States government continues to assert that Mr. Arar is a member of al Qaeda (a charge he denies), and therefore Mr. Arar fits within the criteria for targets of the NSA Surveillance Program described by Attorney General Gonzales.

11. CCR attorneys are also litigating *Turkmen v. Ashcroft*, 02 CV 2307 (JG)(SMG) (E.D.N.Y.), a civil action on behalf of a number of Muslim non-citizens of Arab or South Asian extraction detained shortly after 9/11, ostensibly on immigration grounds; labeled "of interest" to the 9/11 terrorism investigation; and subjected to unlawfully prolonged detention so that they could be investigated for links to terrorism before being returned to their home countries. Plaintiffs have moved for class certification and CCR is attempting to identify additional class members. Given the United States' identification of these plaintiffs as "of interest" to the 9/11

investigation, they have reason to believe that they fall within the criteria for the NSA Surveillance Program set forth by Attorney General Gonzales.

12. Plaintiff Rachel Meeropol is a staff attorney at the Center for Constitutional Rights responsible for litigating cases in the Center's prisoners' rights docket, and serves as lead counsel in *Turkmen v. Ashcroft*, 02-CV-2307 (E.D.N.Y.). In her capacity as an attorney at the Center, Ms. Meeropol routinely discusses matters by telephone or email with potential clients overseas. In the course of her work on the *Turkmen* case she communicates with the named plaintiffs and potential class members, all of whom now live overseas, via both e-mail and telephone calls. Some of the individuals outside the United States Ms. Meeropol communicates with are likely to be viewed by the United States as fitting within the broad criteria for NSA surveillance outlined by Attorney General Gonzales.

13. Since the public disclosure of the existence of the NSA Program, the *Turkmen* plaintiffs have submitted an interrogatory to the United States requesting that it disclose "whether any telephone, email or other communication between any plaintiff and his counsel was monitored or intercepted since the plaintiff's removal from the United States" and to "state the date and time of the communication monitored, state the form of the communication monitored, identify the individuals involved, and identify each person who authorized such monitoring." See Plaintiffs' Second Set of Interrogatories and Request for Production of Documents to the United States (Feb 22, 2006) at 5, interrogatory 9 (appended as Exhibit 1 to this Affirmation). The United States has opposed this discovery request, see Stephen E. Handler, Letter (Feb 28, 2006) at 2 (appended as Exhibit 2 to this Affirmation), and Plaintiffs have already been forced to the effort of challenging this refusal to respond before the court, arguing the matter during a status conference held on March 7, 2006.

14. On January 18, 2006, in an effort to learn more about whether CCR and its staff had been subject to eavesdropping under the Program, CCR submitted FOIA requests concerning the Program to a number of federal government agencies either involved directly in carrying out surveillance under the Program or with which intelligence gathered under the Program has been reportedly shared, including Defendant agencies the NSA, FBI, CIA, DIA, and DHS, as well as the Department of Justice, the Department of the Army and the Department of the Navy. These FOIA requests were submitted on behalf of both CCR as an organization and a number of individual employees and board members of the Center, as well as 108 pro bono volunteer, cooperating and co-counsel attorneys throughout the United States who work or have worked with CCR. (A copy of one of these requests is attached to this Declaration as Ex. 3.) The FOIA requests demand that the agencies turn over, *inter alia*, all “records obtained through or relating to ongoing or completed warrantless electronic surveillance ... regarding or concerning any Requesting Party” including records that “reference, list, or name any Requesting Party.” Substantial expenditures of staff time and effort were involved in preparing and executing these FOIA requests, including the work involved in drafting and reviewing the request, the effort to obtain written authorizations from the numerous outside counsel and other non-staffers who do not work in CCR’s office, and the task of preparing, assembling and mailing the actual requests (including copies of these authorizations), which required two paid staffers working for an entire day to complete, plus substantial work from a volunteer intern who had a limited period of time to devote to working with CCR.

15. The revelation that the government has been carrying on widespread warrantless interception of electronic communications, especially of international communications, has impaired the ability of CCR’s legal staff to communicate via telephone and email with their

overseas clients, witnesses, co-counsel, and other persons, out of fear that their privileged communications are being and will be overheard by the NSA Surveillance Program. As a matter of professional ethics in our role as attorneys, CCR is obligated to take reasonable and appropriate measures to reduce the risk of disclosure of client confidences and work product, since we have been apprised that a program of unlawful electronic surveillance by the government exists and that the program is targeted at a category of persons that includes—from the government’s perspective—some of our clients. The risk that our conversations are being overheard has forced CCR’s legal staff to institute protective measures to reduce the potential impact of such surveillance on our representation of our clients, including not communicating with certain individuals at all by phone or email, and avoiding subjects central to the attorney-client relationship and work product in electronic communications with others. CCR’s legal staff in some instances will have to travel outside the country to avoid the risk of jeopardizing the confidentiality of privileged communications. In other cases we have had to and will continue to have to delay certain communications until an in-person visit or other mode of communication secure against eavesdropping under the NSA Program can be arranged and takes place. The other modes of communication available to us are inadequate substitutes for the use of the telephone and email: travel is time-consuming, expensive, and cannot be done every time a strategic decision or consultation is necessary; the use of the mails or courier services may present other security issues, and do not permit either the ready back-and-forth counseling inherent in any attorney-client relationship or the sort of probing inquiry essential to any investigative enterprise. As a result, we are suffering irreparable harm to our ability to communicate with persons essential to our litigation and advocate vigorously on our clients’ behalf.

16. In direct response to the revelation of the existence of the NSA Program, I issued a directive at a legal meeting on January 4, 2006, which was repeated at a second legal meeting on January 11, and followed by a confidential memorandum to CCR's legal staff, other staff, and cooperating counsel on February 11, 2006. I asked that the entire legal staff undertake the following tasks: endeavor to review all sensitive communications to overseas clients, witnesses and other litigation participants during the period since the commencement of the NSA Program; try to recall the participants in, and the contents of, these sensitive communications; evaluate the risks to the participants and the litigation if such communications had been subject to surveillance; if the risk is high, take corrective action, if possible, or discuss possible corrective action with the directors; and, if appropriate, move for disclosure of any such surveillance in the appropriate cases.

17. All of the individual named Plaintiffs—Ms. Gutierrez, Ms. Foster, Ms. Ahmad, Ms. LaHood and Ms. Meeropol—have traveled internationally in the course of their work with the Center. During these trips, other attorneys and employees of the Center routinely need to communicate with them concerning work-related matters via email or telephone.

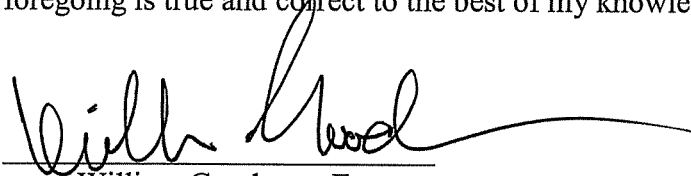
18. All of the individual named Plaintiffs have had the need to communicate with other non-CCR lawyers located outside the United States, including both co-counsel and other attorneys CCR wishes to consult with.

19. In short, we have had to divert staff time and organizational resources away from core mission tasks in order to respond to the NSA Program, including the need to review past sensitive communications that may have been surveilled by the Program, the need to draft and litigate discovery requests concerning possible surveillance, and the need to travel abroad and take other measures in order to safeguard the confidentiality of communications. This diversion

of resources hurts our organization by reducing the number of cases we can bring, and undermines our ability to litigate our existing cases in the most effective manner.

20. Appended to this affirmation as exhibits are true and accurate copies of the following documents: (1) Plaintiffs' Second Set of Interrogatories and Request for Production of Documents to the United States, *Turkmen v. Ashcroft*, 02-CV-2307 (E.D.N.Y.) (Feb 22, 2006), as Ex. 1; (2) Letter from Stephen E. Handler, attorney for the United States, *Turkmen v. Ashcroft*, 02-CV-2307 (E.D.N.Y.)(Feb 28, 2006), as Ex. 2; (3) CCR FOIA request of January 18, 2006; (4) President Bush, Radio Address (Dec. 17, 2005); (5) *Press Conference of President Bush* (Dec. 19, 2005); (6) Letter from William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to congressional leaders, December 22, 2005; (7) *Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence*, Dec. 19, 2005; (8) Michael Hayden, *Remarks at the National Press Club on NSA Domestic Surveillance* (Jan. 23, 2006); (9) James Taranta, *The Weekend Interview with Dick Cheney*, Wall Street Journal, Jan. 28-29, 2006, at A8; (10) *Wartime Executive Power and the NSA's Surveillance Authority Before the Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006).

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.


William Goodman, Esq.

Affirmed before me this 8th day of March, 2006.



BARBARA J. OLSHANSKY
Notary Public, State of New York
No. 02015063740
Qualified in New York County
Commission Expires July 29, 2006