

**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.

DECLARATION OF
WILLIAM W. SWOR

Case No. 2:06-cv-10204-
ADT-RSW

Hon. Anna Diggs Taylor and
R. Steven Whalen

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I, William W. Swor, declare:

1. I am a Michigan resident over the age of eighteen. I have personal knowledge of the facts stated in this declaration.
2. I am an attorney in private practice in Detroit, Michigan and have been a member of the Michigan Bar since 1972. My practice focuses on constitutional law, immigration law, forfeiture, and defending clients charged with various crimes.
3. I received a J.D. from Wayne State University in 1972. I graduated from Oakland University in 1969 with a B.A. in Political Science.
4. I am a member of the National Association of Criminal Defense Lawyers and a member of the Board of Directors of the Criminal Defense Attorneys of Michigan. I am the recipient of the CDAM Justice for All Award for 2004, and the National Lawyers Guild Defender of Justice Award for 2005. I have been a faculty member of the faculty for Advanced Training Seminars, Criminal Defense Attorneys of Michigan since 1993.
5. I have represented, currently represent, and expect to represent in the future, individuals who have been investigated and or prosecuted under one or more of the federal terrorism-related statutes. I have recently represented or currently represent defendants in three such matters in several federal districts.
6. I represented Abdel-Ilah Elmardoudi, who was accused by the United States of providing material aid in support of terrorism. *See United States v. Koubriti*, 336 F. Supp. 2d 676 (E.D. Mich. 2004) (No. 01-80778). I represent Mahmoud Kourani, who was accused by the United States of providing material aid to Hezbollah, in Lebanon. *See United States v. Kourani*, No. 03-81030 (E.D. Mich.). I also represent Kifah Wael Jayyousi who has been accused of

providing aid to terrorists, and who was recently ordered released on bond by District Court Judge Marcia Cooke in Miami. *See United States v. Hassoun, et al.*, 04-CR-6001 (S.D. Fla.).

7. My legal practice requires that I communicate by telephone and e-mail with individuals outside of the United States, including witnesses, potential experts, other potential sources, and others who are located in the Middle East. I must communicate confidentially with such overseas witnesses to effectively represent my clients.

8. I believe that my communications from the United States with individuals in the Middle East are likely being intercepted and monitored by the U.S. government. My belief is based on public statements by members of the Bush Administration. I handle cases involving issues that fit the parameters that the government has said will trigger surveillance under the NSA Program. For example, because the United States has charged some of my clients with terrorism-related offenses, I presume from the statements of Administration officials that my communications with my clients' contacts and associates in the Middle East are being intercepted and monitored by the NSA.

9. For that reason, I will not discuss on the telephone or by e-mail with potential witnesses in the Middle East information that may or may not assist my clients. I believe I would violate my ethical obligations by discussing such information on international phone calls or in international e-mails because I cannot be certain that such communications are confidential. On the contrary, I strongly believe that they are not. Because I cannot discuss factual issues with witnesses over the phone for fear of interception, my ability to represent my clients has been compromised and my practice harmed.

10. For example, I represent and have represented individuals the U.S. government believes to be involved with terrorist groups. I receive telephone calls from my clients' family members and others who are in the Middle East. My client Mahmoud Kourani has a family member in the Middle East who shares the same first and last name, so I feel certain that communications with that family member are intercepted and monitored. Because my questions to potential witnesses have the potential to elicit confidential information regarding my clients, I consider the conversations to be subject to attorney work-product privilege.

11. Since I learned about the NSA Program, I have severely curtailed my telephone and e-mail communications with witnesses and clients' family members in the Middle East. Although I was careful in communicating with international contacts before I learned of the NSA Program, I understood that certain safeguards applied to surveillance conducted under FISA that allowed me to elicit and discuss privileged or confidential information with potential witnesses and other sources abroad. I believed that FISA had minimization requirements preventing privileged communications from being recorded, or at least used against my clients in court. I understood that FISA contained its own suppression provisions, so that privileged information could not be used as evidence against my clients. FISA requires a judge's review and, even if FISA judges generally approved surveillance, their review provided a layer of protection against the improper monitoring and use of privileged information. I believe that the FISA provisions provided a disincentive for the government to obtain and use privileged information. Now I believe that work-product privileged conversations *are* being monitored under the NSA Program, and I am unaware of any limits on how the fruits of the surveillance may be used. Thus, I no

longer discuss substantive matters with witnesses and family members. I try to limit communications about my clients' cases with individuals outside the U.S. to procedural matters.

12. For example, I need to communicate with Mr. Kourani's family members and other individuals in the Middle East to obtain information that would help me convince the prosecutor in Mr. Kourani's case to move for a sentence reduction pursuant to Fed. R. Crim. Proc. 35. When I speak to witnesses in the Middle East who are in a position to help Mr. Kourani by virtue of information to which they may have access, I do not try to elicit any factual information over the phone because I fear that our conversations are being monitored. If such communications are monitored by the government, I will not be able to offer the government any information it does not already know in order to persuade them to seek a reduced sentence for my client.

13. Because I cannot fulfill my obligation of confidentiality if I communicate with witnesses in Mr. Kourani's case over the phone, I will have to travel to the Middle East to talk with witnesses in person. I will ultimately bear this expense if Mr. Kourani cannot.

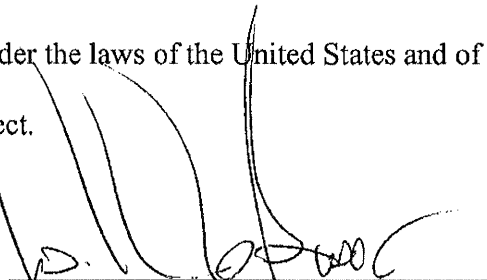
14. In Mr. Jayyousi's case, there are witnesses in the Middle East who I believe can provide substantial information in support of his defense. Since the NSA Program has been disclosed, I cannot effectively communicate with these witnesses over the telephone or by e-mail. I will need to travel to the Middle East to communicate with these witnesses to prepare the case and will ultimately bear that expense if Mr. Jayyousi cannot.

15. In the case of Mr. Elmardoudi, all terrorism-related charges against him have been dropped. He is currently facing a credit card fraud charge and his family members in the Middle East occasionally call me to check on the status of that case. Since I learned of the NSA

Program, I have been hesitant to talk with his family members over the phone about the fraud case. I do not talk with them about the facts of the case and have discouraged them from contacting me by phone. Thus, in addition to depriving my client's family of this communication, the NSA Program affects my ability to maintain relationships with my clients' family members and with potential witnesses.

16. Because I believe that the NSA is intercepting and monitoring my international communications, I do not communicate by international phone calls or e-mails with my clients' contacts and associates in the Middle East or with potential witnesses in my clients' cases who live in the Middle East about anything that they would not want disclosed to U.S. government officials or that the individuals would not want to be relayed by U.S. government officials to others. I cannot communicate sensitive or privileged information to such persons or receive such information from them. This directly affects my ability to obtain exculpatory and other helpful evidence and to defend my clients.

I declare under penalty of perjury under the laws of the United States and of the State of Michigan that the foregoing is true and correct.



William W. Swor

Executed at Detroit, Michigan this 8th day of March, 2006.