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IN THE UNITED STATES DISTRICT
FOR THE DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC)
FOUNDATION, INC., et al.,)
)
Plaintiffs,)
v.)
)
GEORGE W. BUSH, et al.,)
)
Defendants.)
)

Case No. CV 06-274-KI
**PLAINTIFFS' CONCISE
STATEMENT OF MATERIAL
FACTS**

Pursuant to LR 56.1, plaintiffs present the following statement of undisputed facts:

1. Shortly after the terrorist attacks of September 11, 2001, President George W. Bush authorized a secret program for the National Security Agency (NSA) to engage in warrantless electronic surveillance of international communications into and out of the United States where the NSA believes that one of the participants is somehow affiliated with or working in support of al-Qaeda. Exhibit A¹ at 1881 (President Bush’s statement that “[i]n the weeks following the terrorist attacks on our Nation, I authorized the National Security Agency . . . to intercept the international communications of people with known links to Al Qaida and related terrorist organizations”); Exhibit B at 1 & 2 (Attorney General Gonzales’s statement that “[t]he President has authorized a program to engage in electronic surveillance” where a party to the communication is “a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda” or “is somehow affiliated with al Qaeda”); Exhibit C at 4 (General Hayden’s statement that the program encompasses “only international calls and only those we have reasonable basis to believe involve al Qaeda or one of its affiliates”); Exhibit D at 1889 (President Bush’s statement that calls are intercepted “from outside the country to in the country or vice versa”), Exhibit E at 2 (Vice-President Cheney’s statement that “[i]t is the interception of communications, one end of which is

¹Each of the exhibits referred to in this Concise Statement are attached to the Declaration of Steven Goldberg in Support of Plaintiffs’ Motion for Partial Summary Judgment.

outside the United States, and one end of which, either outside the United States or inside, we have reason to believe is al-Qaeda-connected”); Exhibit F at 1 (Assistant Attorney General Moschella’s statement that “the NSA intercepts certain international communications into and out of the United States”); Exhibit G at 3 (Attorney General Gonzales’s statement that the program intercepts “international communications involving someone we reasonably believe is associated with al Qaeda”); Exhibit I at 1 (Department of Justice “White Paper” statement that “shortly after the attacks of September 11, 2001, [the President] has authorized the National Security Agency (‘NSA’) to intercept international communications into and out of the United States of persons linked to al Qaeda or related terrorist organizations”).

2. The President has reauthorized this warrantless surveillance program more than 30 times and intends to continue reauthorizing it. Exhibit D at 1885 (President Bush’s statement that “I’ve reauthorized this program more than 30 times since the September the 11th attacks, and I intend to do so . . . for so long as the Nation faces the continuing threat of an enemy that wants to kill American citizens”).

3. Under the program, the NSA intercepts electronic communications without probable cause to believe that the targets of interception have violated the law. Exhibit H at 115 (Attorney General Gonzales’s statement that “I think it’s probable cause. But it’s not probable cause as to guilt. . . . Or probable cause as to a crime being committed. It’s probable cause that a party to the communication is a member or agent of Al Qaida.”).

4. Under the program, the NSA intercepts – for collection, retention and dissemination – electronic communications that are subject to the requirements of FISA, which Attorney General Gonzales has said “requires a court order before engaging in this kind of surveillance.” Exhibit B at 1; Exh. H at 95 (Attorney General Gonzales’s statement that under the program “information is collected, information is retained and information is disseminated”); *see also* Exhibit F at 5 (Assistant Attorney General Moschella’s statement that “FISA could not have provided the speed and agility required”).

5. The program does not comply with the requirements of FISA; rather, according to General Michael Hayden, it is conducted “in lieu of” FISA, is “more aggressive” than FISA, and is “quicker and a bit softer” than FISA. Exhibit B at 3 & 4; Exhibit C at 4.

6. Under the program, the NSA intercepts electronic communications without obtaining a warrant or any other type of judicial authorization; rather, the surveillance occurs solely upon a decision by an employee of the NSA and approval by an NSA shift supervisor. Exhibit B at 7 (General Hayden’s statement that the decision “is made by the operational work force at the National Security Agency . . . and it’s a two-person standard that must be signed off by a shift supervisor”); Exhibit C at 12 (General Hayden’s statement, when asked whether the program takes away the decision-making process “from a federal judge, the FISA court judge, and hand[s] it over to a shift supervisor at

NSA,” that “I think you’ve accurately described the criteria under which this operates”).

7. On numerous occasions in March and April of 2004, pursuant to the program, the NSA conducted warrantless electronic surveillance of the contents of communications between, on one end, a director of plaintiff Al-Haramain Islamic Foundation, Inc. (an Oregon nonprofit corporation) while the director was located outside the United States and, on the other end, plaintiffs Wendell Belew (a United States citizen) and Asim Ghafoor (a United States citizen) while they were located inside the United States. Sealed Document; Sealed Second Declaration of Asim Ghafoor, ¶¶ 21, 22, & 26; Sealed Second Declaration of Wendell Belew, ¶¶ 2 & 3; Complaint, ¶¶ 4, 5 & 6.

DATED this 30th day of October, 2006.

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