

UNDER SEAL

05-4896-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN DOE, AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,

Plaintiffs-Appellees,

v.

ALBERTO GONZALES, in his official capacity as Attorney General of the United States,
ROBERT S. MUELLER III, in his official capacity as Director of the Federal Bureau of
Investigation, and JOHN ROE, Federal Bureau of Investigation,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL APPENDIX

During the course of the litigation, the government failed to redact references to Library Connection despite its argument that disclosure of Library Connection's identity would harm national security.

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and the ACLUF has been to stem the backlash on civil liberties that has taken place in the name of national security. *Id.* ¶7. In particular, the ACLU and the ACLUF have been the leading voice of opposition to certain provisions Patriot Act. *Id.* Through their combined public education, litigation, and lobbying efforts, the ACLU and the ACLUF continue to play a critical role in influencing the public debate over the Patriot Act. *Id.* Lawyers for the ACLUF represent Library Connection in this action. *Id.* ¶21; [REDACTED] Decl. Exh. A.

C. The National Security Letter Served on Library Connection

On [REDACTED] FBI agent [REDACTED] of the FBI [REDACTED] Division, telephoned [REDACTED] to inform him that the FBI would be serving an NSL on [REDACTED] [REDACTED] Decl. ¶16. [REDACTED] did not describe the substance of the letter, and did not notify [REDACTED] about the NSL's non-disclosure provision. *Id.* [REDACTED] asked [REDACTED] who could receive service of the NSL, and [REDACTED] told him that [REDACTED] a [REDACTED] of [REDACTED] would receive service. *Id.*

On [REDACTED] and another [REDACTED] delivered the NSL (hereinafter [REDACTED] NSL") to [REDACTED] [REDACTED] Decl. ¶17. The letter, which is dated [REDACTED] is on FBI letterhead and signed by defendant [REDACTED] [REDACTED] FBI [REDACTED] Division. *Id.*; [REDACTED] Decl. Exh. A. The NSL states that [REDACTED] [REDACTED] "hereby directed to provide to the Federal Bureau of Investigation (FBI) any and all subscriber information, billing information and access logs of any person or entity" related to [REDACTED] [REDACTED] Decl. ¶19; [REDACTED] Decl. Exh. A. The NSL does not specify any procedure by which [REDACTED] can challenge the validity of the NSL. [REDACTED] Decl. ¶23. The NSL states that 18 U.S.C. § 2709(c) "prohibits any

libraries and library associations, both locally and nationally, to discuss and develop standardized procedures and policies for responding to the receipt of future NSLs. [REDACTED] Decl. ¶15; [REDACTED] Decl. ¶¶31-32. Since the [REDACTED] NSL was served, [REDACTED] has received phone calls from libraries asking questions about the Patriot Act. Chase Decl. ¶16. For fear of violating the gag, he has "remained silent about any and all aspects of the NSL power, including its mere existence." *Id.*

[REDACTED] directors are also gagged from informing library patrons about the NSL. [REDACTED] Decl. ¶¶13, 20. Library patrons are "generally not aware that the FBI can demand their electronic and paper records without their knowledge and consent." *Id.* ¶13. This information is critical to many library patrons, because many library patrons "take the right of privacy within libraries very seriously," and "use books and computers within libraries under the assumption that what they read and view is private and free from government monitoring." [REDACTED] Decl. ¶20; *see also* [REDACTED] Decl. ¶15. But for the gag, [REDACTED] would disclose the threat that NSLs pose to intellectual freedom, and discuss that threat with other libraries, library associations, and the public. [REDACTED] Decl. ¶¶ 11, 13-14, 16-17, 20; [REDACTED] Decl. ¶¶28-29, 31, 33, 35.

The gag is also preventing plaintiffs from disclosing information about the NSL to Congress, who is currently considering legislation to amend Section 2709 and other provisions of the Patriot Act. Romero Decl. ¶¶21-24, 27-30; [REDACTED] Decl. ¶¶35-36; *see also* [REDACTED] Decl. ¶¶18-20. The question of whether the FBI has used Patriot Act provisions to obtain information about library patrons has been of extraordinary interest in the library community, in the media, and in Congress. Romero Decl. ¶24; [REDACTED] Decl. ¶20; [REDACTED] Decl. ¶¶32, 36. Plaintiffs, ACLU, and ACLUF have worked closely with librarians and library associations in publicizing

injunction has been satisfied.”); *Beal v. Stern*, 184 F.3d 117, 123 (2d Cir. 1999) (“A statute that threatens freedom of expression to a significant degree by its nature gives rise to irreparable injury.”); *Bery v. City of New York*, 97 F.3d 689, 693 (2d Cir. 1996) (“Violations of First Amendment rights are commonly considered irreparable injuries for the purposes of a preliminary injunction.”).

Plaintiffs are entitled to preliminary relief because the gag is irreparably harming their First Amendment rights. The gag is preventing plaintiffs from disclosing fully protected speech about the government’s use of expanded powers under the Patriot Act to demand sensitive records from libraries. See [REDACTED] Decl. ¶¶11-20; [REDACTED] Decl. ¶¶28-36; Romero Decl. ¶¶21-24, 27-30. [REDACTED] wants to communicate this information to [REDACTED] and their patrons, to other libraries and library associations in [REDACTED] and around the country, to the general public, and to elected officials. See [REDACTED] Decl. ¶¶11-20; [REDACTED] Decl. ¶¶28-36. [REDACTED] is particularly concerned that many libraries around the country do not know the FBI can use the NSL power to demand sensitive records about library patrons. See [REDACTED] Decl. ¶11. But for the gag, Plaintiff Library connection would disclose this information. [REDACTED] Decl. ¶¶11-20; [REDACTED] Decl. ¶¶38-36.

Plaintiff ACLU, which has been the leading voice in opposing expanded surveillance powers under the Patriot Act, wants to disclose the information to its members, to the media, to the general public, and to Congress. See Romero Decl. ¶¶7-24; 27-30. In particular, plaintiffs wish to disclose the information immediately in order to contribute vital information to the public debate about whether to limit or expand Patriot Act powers. *Id.* ¶¶27-29. If Congress were aware that the FBI is using the NSL provision against libraries, it would be more inclined to