



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

  
 AMERICAN  
CIVIL LIBERTIES UNION; and  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

04 Civ. 2614 (VM)

v.

**SEALED CASE**

ALBERTO GONZALES, in his official capacity  
as Attorney General of the United States;  
ROBERT MUELLER, in his official capacity  
as Director of the Federal Bureau of  
Investigation; and MARION E. BOWMAN,  
in his official capacity as Senior Counsel to  
the Federal Bureau of Investigation,

Defendants.

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

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September 8, 2006

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

- I. In [REDACTED] the Federal Bureau of Investigation (FBI) served a National Security Letter (NSL) on [REDACTED] demanding information about one of [REDACTED] clients.
- A. [REDACTED] Internet access and consulting business located and incorporated in [REDACTED] Second [REDACTED] Decl. ¶¶ 1, 4-7.
- B. In [REDACTED] the FBI served an NSL on [REDACTED] that demanded information about one of [REDACTED] clients. Second [REDACTED] Decl. ¶¶ 2, 8-19; Second [REDACTED] Decl. Exh. 1.
- C. [REDACTED] the President of [REDACTED] personally received the NSL. Second [REDACTED] Decl. ¶¶ 2, 8-11.
- D. The NSL "prohibits any officer, employee or agent of [REDACTED] from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions." Second [REDACTED] Decl. ¶¶ 2, 12, 16-17; Second [REDACTED] Decl. Exh. 1.
- II. **The FBI has served NSLs on other entities, including libraries.**
- A. The Department of Justice itself reported that it issued more than 9,200 NSLs in 2005, not including demands that sought only "subscriber information." Second [REDACTED] Decl. ¶ 43; Second [REDACTED] Decl. Exh. 2.
- B. In November 2005, the Washington Post reported that the FBI now issues over 30,000 NSLs, in total, per year. *Id.* ¶ 43; Second [REDACTED] Decl. Exh. 2.
- C. The FBI has served an NSL on Library Connection, Inc., a consortium of libraries in Connecticut, seeking library patron information. Christian Decl. ¶¶ 3, 9-13; Christian Decl. Exh. 1; Second Romero Decl. ¶¶ 30-31, 35; Third Beeson Decl. ¶ 41.
- III. **Plaintiffs have been subject to a gag for over [REDACTED].**
- A. [REDACTED] and [REDACTED] have been subject to a gag since [REDACTED] Second [REDACTED] Decl. ¶¶ 2, 8, 10-12; Second [REDACTED] Decl. Exh. 1.
- B. As the agent of [REDACTED] and [REDACTED] ACLU staff have been subject to a gag since [REDACTED] Third Beeson Decl. ¶¶ 2,5; Second Romero Decl. ¶ 22.
- C. The gag prohibits plaintiffs from identifying [REDACTED] or [REDACTED] as a recipient of an NSL. Third Beeson Decl. ¶¶ 10, 31; Third Beeson Decl. Exh. 3-4; Second [REDACTED] Decl. ¶¶ 2, 12, 23-24; Second Romero Decl. ¶ 22.
- D. As the agent of another NSL recipient, ACLU staff have been subject to another NSL gag. Christian Decl. ¶¶ 16, 29; Second Romero Decl. ¶¶ 30-31; Third Beeson Decl. ¶¶ 41-51; Third Beeson Decl. Exh. 34-40.

**IV. The government has used and continues to use the gag to prohibit disclosure of a great deal of innocuous and non-sensitive information.**

- A. The government has used the gag to prevent the public from learning about this litigation for several weeks after the action was filed. Third Beeson Decl. ¶ 5; Second Romero Decl. ¶ 24.
- B. The government has used and continues to use the gag to prevent disclosure of the identities of NSL recipients. Second [REDACTED] Decl. ¶¶ 2, 12, 22-24, 27-28; Third Beeson Decl. ¶¶ 2, 9, 14-16, 31, 43-45; Third Beeson Decl. Exh. 3, 11, 34-35; Christian Decl. ¶¶ 11, 15-20, 29, 32, 34, 36; Second Romero Decl. ¶¶ 22-23.
- C. The government has used the gag to prevent disclosure of the identity of an NSL recipient even where its identity has been correctly reported by the press and it has been identified in court and legal documents. Christian Decl. ¶¶ 21-22, 24-25, 27-29, 32; Third Beeson Decl. ¶¶ 43-46; Third Beeson Decl. Exh. 34-37.
- D. The government has used the gag to prevent disclosure of the mere fact that at some unspecified time and place the FBI issued an NSL to some unspecified Internet Service Provider. Third Beeson Decl. ¶ 9; Third Beeson Decl. Exh. 3; Second [REDACTED] Decl. ¶ 22; Second Romero Decl. ¶ 23.
- E. The government has used the gag to prevent disclosure of the fact that the FBI had used its NSL power or invoked the gag provision. Third Beeson Decl. ¶¶ 3-5, 8, 10-13; Third Beeson Decl. Exh. 1-10.
- F. The government has used the gag to prevent disclosure of non-sensitive aspects of the NSL itself. Third Beeson Decl. ¶¶ 10, 17-18, 35; Third Beeson Decl. Exh. 3-4, 12-16, 23, 25-27; Second Romero Decl. ¶¶ 24-32; Second [REDACTED] Decl. ¶¶ 21-25.
- G. The government has used the gag to prevent disclosure of the fact that the case implicates “national security” and that the case is “sensitive” in nature. Third Beeson Decl. ¶¶ 19-20, 38-40; Third Beeson Decl. Exh. 3, 17, 30-33.
- H. The government has used the gag to prevent disclosure of direct quotes from judicial opinions. Third Beeson Decl. ¶ 47; Third Beeson Decl. Exh. 34; Christian Decl. ¶ 23.
- I. The government has used the gag to prevent disclosure of a direct quote from a state statute. Christian Decl. ¶ 23.
- J. The government has used the gag to suppress information that was already in the public domain. Third Beeson Decl. ¶¶ 42-51; Third Beeson Decl. Exh. 34-40; Christian Decl. ¶¶ 21-29.
- K. The government has used the gag to prevent disclosure of published news articles. Christian Decl. ¶¶ 24-29.
- L. The government has used the gag to prevent disclosure of innocuous information about the services provided by [REDACTED] and general characterizations of those services. Third Beeson Decl. ¶¶ 14-16; Third Beeson Decl. Exh. 11; Second [REDACTED] Decl. ¶ 42.

- M. The government has used the gag to prevent disclosure of the fact that the NSL relates generically to an underlying investigation. Third Beeson Decl. ¶ 21; Third Beeson Decl. Exh. 3.
- N. The government continues to use the gag to prevent disclosure of innocuous information about [REDACTED] and the services it provided to its clients. Third Beeson Decl. ¶ 31-33, 37; Third Beeson Decl. Exh. 23-24, 26, 29.
- O. The government continues to use the gag to prevent disclosure of generic references to "terrorism" in the legal papers. Third Beeson Decl. ¶ 40; Third Beeson Decl. Exh. 32-33.
- P. The government continues to use the gag to prevent disclosure of the fact that the NSL relates generically to an underlying [REDACTED] investigation. Third Beeson Decl. ¶ 21, 38; Third Beeson Decl. Exh. 3, 30-31.
- Q. The government continues to use the gag to prevent disclosure of the fact that the underlying investigation is ongoing and that it "has a need" for the information sought through the NSL. Third Beeson Decl. ¶ 39; Third Beeson Decl. Exh. 31.
- R. The government continues to use the gag to prevent disclosure of information about the kinds of information the FBI can obtain through an NSL, including the specific kinds of information sought through the [REDACTED] NSL. Third Beeson Decl. ¶¶ 31-35; Third Beeson Decl. Exh. 23-27.
- S. The government continues to use the gag to prevent disclosure of the fact that the NSL seeks to [REDACTED]. Third Beeson Decl. ¶ 33; Third Beeson Decl. Exh. 24.
- T. The gag provision has prevented and continues to prevent the plaintiffs [REDACTED] the ACLU and ACLUF, and others, from providing non-sensitive information to the public, the press, members of Congress, and ACLU staff, members, and donors. Second [REDACTED] Decl. ¶¶ 37-45; Romero Decl. ¶¶ 27-29, 33-35; Christian Decl. ¶¶ 11, 17-18, 31; Third Beeson Decl. ¶¶ 8, 11, 26; Third Beeson Decl. Exh. 1-3, 5-6.

V. **The government's use of the gag provision has undermined and continues to undermine plaintiffs' and others' business and personal relationships.**

- A. The gag provision has prevented and continues to prevent [REDACTED] from notifying its client that the government has sought [REDACTED] records. Second [REDACTED] Decl. ¶¶ 12, 22, 26.
- B. The gag provision has prevented and continues to prevent [REDACTED] from informing any of its clients about the NSL or its efforts to protect client privacy through this litigation. *Id.* ¶¶ 27-30
- C. The gag provision has prevented and continues to prevent [REDACTED] from communicating with other electronic communication service providers about how to respond to NSLs. *Id.* ¶ 43.
- D. The gag provision has impaired and continues to impair [REDACTED] personal relationships with [REDACTED] friends, family, and girlfriend. *Id.* ¶¶ 25, 31-35.
- E. The gag provision has impaired other NSL recipients' relationships with colleagues, staff, family and friends. Christian Decl. ¶¶ 18-19, 30-31.

**VI. The government has used and continues to use the gag provision to suppress political speech.**

- A. The gag has prevented and continues to prevent plaintiffs and others from participating in the Patriot Act reauthorization debate and from sharing information with Congress and the public. Second [REDACTED] Decl. ¶¶ 38-45; Second Romero Decl. ¶¶ 8, 11, 14, 22-35; Christian Decl. ¶¶ 32-37.
- B. The gag has prevented and continues to prevent plaintiff [REDACTED] from lobbying Congress to change the NSL law. Second [REDACTED] Decl. ¶¶ 40-46.
- C. The gag has prevented and continues to prevent plaintiff [REDACTED] from disclosing information about NSLs and the NSL [REDACTED] received to other ISPs in an effort to collectively advocate for changes to the law. *Id.* ¶ 43.
- D. The gag has prevented and continues to prevent plaintiff [REDACTED] from engaging in certain political conversations with friends and associates and from engaging in certain political speech during those conversations. *Id.* ¶¶ 35, 37-39.
- E. The gag has prevented and continues to prevent plaintiff [REDACTED] from posting certain information and personal commentary about the Patriot Act and NSLs on [REDACTED] website. *Id.* ¶¶ 37-38.
- F. The gag has prevented and continues to prevent plaintiffs ACLU and ACLUF from educating the public about the government's use of the Patriot Act. Second Romero Decl. ¶¶ 8, 11, 17, 22-23, 31.
- G. The gag has prevented and continues to prevent plaintiffs ACLU and ACLUF from providing relevant information to Congress about the way the FBI is using the NSL power. *Id.* ¶¶ 16, 22-23, 29-35.
- H. The gag has prevented and continues to prevent plaintiffs ACLU and ACLUF from informing the public and Congress about the way in which the government has used the gag provision to suppress speech. *Id.* ¶¶ 29, 31, 34.
- I. The gag has prevented other NSL recipients from engaging in the Patriot Act reauthorization debate. Christian Decl. ¶¶ 32-37.
- J. The gag has prevented other NSL recipients from sharing information with Congress and the public. *Id.* ¶¶ 11, 15, 17-120, 29-37.
- K. The gag has prevented other NSL recipients from lobbying Congress for changes to the NSL law. *Id.* ¶¶ 32-37.

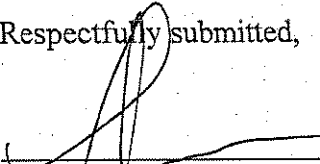
**VII. The government has used and continues to use the gag provision to suppress speech because of its political message.**

- A. The government has used the gag to suppress information relating to the dangers of government censorship in the name of national security. Third Beeson Decl. ¶¶ 23-25; Third Beeson Decl. Exh. 18-20.
- B. The government has used the gag to suppress information about the need for public scrutiny of government action in order to prevent abuses. Third Beeson Decl. ¶ 25; Third Beeson Decl. Exh. 20; Second Romero Decl. ¶¶ 32-35.
- C. The government has used and continues to use the gag to suppress plaintiff [REDACTED] concern that the subject of the NSL is being impermissibly targeted

[REDACTED] Third Beeson Decl. ¶ 27; Third Beeson Decl.  
Exh. 21-22; Second [REDACTED] Decl. ¶¶ 3, 14, 41.

VIII. **The government's use of the gag provision has prevented and continues to prevent the public, the press, and Congress from obtaining facts essential to the ongoing debate about the legitimacy of government powers under the NSL power and the Patriot Act.** Second [REDACTED] Decl. ¶¶ 37-46; Romero Decl. ¶¶ 22-23, 26, 29-35; Christian Decl. ¶¶ 32-37.

Respectfully submitted,

  
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