

EXHIBIT 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMNESTY INTERNATIONAL USA; GLOBAL FUND FOR WOMEN; GLOBAL RIGHTS; HUMAN RIGHTS WATCH; INTERNATIONAL CRIMINAL DEFENSE ATTORNEYS ASSOCIATION; THE NATION MAGAZINE; PEN AMERICAN CENTER; SERVICE EMPLOYEES INTERNATIONAL UNION; WASHINGTON OFFICE ON LATIN AMERICA; DANIEL N. ARSHACK; DAVID NEVIN; SCOTT MCKAY; and SYLVIA ROYCE,

Plaintiffs,

v.

JOHN M. McCONNELL, in his official capacity as Director of National Intelligence; LT. GEN. KEITH B. ALEXANDER, in his official capacity as Director of the National Security Agency and Chief of the Central Security Service; and MICHAEL B. MUKASEY, in his official capacity as Attorney General of the United States,

Defendants.

**DECLARATION OF
JOANNE MARINER**

Case No. 08 Civ. 6259 (JGK)

ECF CASE

DECLARATION OF JOANNE MARINER

I, Joanne Mariner, declare:

1. I am a resident of New York, New York over the age of eighteen. I have personal knowledge of the facts stated in this declaration.

2. I am the Terrorism and Counterterrorism Program Director at Human Rights Watch (“HRW”). I received my law degree from Yale Law School and served as a law clerk to the Honorable Stephen R. Reinhardt of the United States Court of Appeals for the Ninth Circuit before joining HRW in 1994. I speak English, French, and Spanish.

3. HRW is a non-profit, non-governmental human rights organization based in New York City. It employs over 246 staff members located across offices in Brussels, Geneva,

London, Moscow, Paris, Hong Kong, Johannesburg, Los Angeles, New York City, San Francisco, Tashkent, Toronto, and Washington, D.C. Formed in 1978, HRW is dedicated to protecting the human rights of people around the world. The hallmark of HRW's work is its commitment to even-handed, accurate reporting on human rights abuses throughout the globe.

4. HRW researchers conduct fact-finding investigations into human rights abuses by governments and non-state actors in all regions of the world. From these investigations – on topics ranging from the detention of peaceful demonstrators in Cairo by the Egyptian security forces following President Bush's visit, to the state of democracy in Ethiopia – HRW develops materials for publication. These materials often generate extensive coverage in local and international media. HRW also seeks dialogue with offending governments to encourage them to change abusive laws and policies, and enlists the support of other influential actors such as the United Nations, the European Union, international financial institutions, the U.S. government, and others to achieve this end.

5. In connection with their research, reporting, and advocacy work, HRW's U.S.-based staff routinely exchange sensitive information by telephone and e-mail with individuals based abroad, including HRW staff as well as victims of human rights abuses, witnesses, experts, scholars, political activists, and foreign government officials. Because of the nature of HRW's work, some of the information we exchange by telephone and e-mail relates to terrorism and counterterrorism, and much of the information relates to the foreign affairs of the United States. For example, over the last few months alone, HRW researchers have exchanged information about the CIA's "rendition" program, the CIA's secret detention program, abuses committed by United States military contractors in Iraq and Afghanistan, and the Guantanamo Military Commissions. Our international communications are critical to our work. The information we

exchange and collect through these communications provides the basis for much of our reporting and advocacy.

6. My own work at HRW, like the work of most other HRW researchers, is international in its scope. I have worked on a wide variety of issues for HRW, including war crimes in Colombia, Kosovo, and Darfur; political violence in Haiti; and the interface between terrorism and the laws of war. For example, I drafted HRW's 1999 submission to the House of Lords in connection with the Government of Spain's attempt to extradite General Augusto Pinochet from the United Kingdom to stand trial in Spain for crimes committed during the period when General Pinochet was head of state in Chile. I have also conducted advocacy before various U.N. bodies. For example, in July 2008, I was a panelist at the United Nations discussing human rights abuses taking place in the "war on terror." In September 2008, I participated as a panelist at a U.N. conference commemorating the 60th anniversary of the Universal Declaration of Human Rights. I have held numerous meetings with the staff of the Office of the U.N. High Commissioner for Human Rights to discuss and advocate in support of various human rights issues. I have also previously testified before the European Parliament on the CIA's secret detention program, and I am the author of two recent reports on CIA abuses: *Ghost Prisoner: Two Years in Secret CIA Detention* (2007) and *Double Jeopardy: CIA Renditions to Jordan* (2008).

7. In connection with my work at HRW, I communicate by telephone and e-mail with people all over the world, including in Jordan, Egypt, Pakistan, Afghanistan, the Gaza Strip, Morocco, the United Kingdom, and Argentina. For example, I routinely speak to HRW staff in London and Milan. I also communicate on occasion with HRW's Pakistan researcher, who is based in London and Pakistan. I also speak with translators, former detainees, lawyers for

detainees, relatives of detainees, political activists, journalists, and fixers (people who have contacts in foreign countries and who are able to facilitate arrangements with those contacts and sometimes serve as translators).

8. Because of the nature of my work and the location and identities of the people I communicate with, I believe that at least some of my communications are likely to be acquired by the U.S. government under the new surveillance law. Many of the people with whom I communicate are located in geographic areas that are a special focus of the U.S. government's counterterrorism or diplomatic efforts – for example, in the Middle East, North Africa, Central Asia, and South Asia. In addition, I often communicate with people who have been targeted in some way by the U.S. government in the past. For example, some of the work I do involves trying to track down people who were rendered by the CIA to countries in which they were tortured; many of these people are people whom the CIA has said are (or were) associated with terrorist organizations. I also communicate with people who were formerly detained by the CIA or by intelligence services that work closely with the CIA. For example, I have communicated with people who were previously in CIA custody at Bagram Air Base and the “Dark Prison” in Afghanistan. I also communicate with members of political groups that are targeted by their own governments as well as by the United States. For example, I have communicated with members of Muslim groups located in Jordan and Egypt.

9. My work depends on my ability to assure the people with whom I communicate that their communications with me (and in some cases even their identities) will be kept confidential. In order to document human rights abuses, I need to gather facts from people who have first-hand knowledge of those abuses. Over ten years of experience as human rights attorney and researcher has taught me that victims of human rights abuses are often reluctant to

share those facts. Some of them have been severely humiliated by what they have faced and want to avoid bringing more attention to themselves. Others fear that reporting abuse will make them vulnerable to further abuse. Many of the people with whom I communicate fear reprisals from their own governments, from non-governmental actors (including terrorist organizations), and from the U.S. government. These individuals share information with me because they trust me to treat their information with appropriate sensitivity. Frequently, witnesses, experts, and foreign government officials who share information with me also insist that their identities be kept confidential. They, too, often have concerns about possible reprisals.

10. By significantly increasing the likelihood that my communications will be acquired by the U.S. government, the new surveillance law compromises my ability to gather information that is relevant and necessary to my work. Many of the people with whom I communicate will not share information with me if they believe that by sharing information with me they are also sharing information with the U.S. government – and with any other government, intelligence service, or organization to which the U.S. government chooses to disseminate the information. The new surveillance law means that it will be more difficult for me to gather information. In some cases I will have to travel abroad to gather information that I would otherwise have gathered by telephone or e-mail. Such travel is time-consuming and costly. Because of the nature and geographic focus of my work, such travel can also be dangerous – not only for me but for the people with whom I meet. In some cases I will not be able to gather information that I need in order to make my research comprehensive and my advocacy effective.

11. Given the nature and geographic focus of my work, the risk of government surveillance is not entirely new, and I have always used passwords and encryption to protect the confidentiality of my information and communications. In the past, however, U.S. government

surveillance was both narrow and judicially supervised. I am concerned that now the U.S. government may be able to engage in almost entirely unsupervised surveillance and this surveillance can be directed very broadly and at anyone at all – at political dissidents, foreign government officials, witnesses, experts, human rights organizations (including, for example, Human Rights Watch’s counterparts in other countries), or even victims of human rights abuses who are not suspected of having done anything wrong. This kind of unchecked surveillance has much more significant implications for my work and the work of other human rights researchers. A risk that was previously limited to a subset of communications with a small subset of people is now a risk that we must evaluate and address every time we make an international telephone call or send an e-mail to an individual located abroad.

12. I recognize that the government has a legitimate interest in collecting information about people who pose a threat to national security. However, I believe that the government’s surveillance activities should be subject to meaningful safeguards and oversight. In the course of my work in other countries, I have seen the way that unchecked government surveillance can erode the institutions of democracy. I am participating in this lawsuit because I do not want to see the same erosion take place here in the United States.

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



JOANNE MARINER

Executed at New York, New York, on September 9, 2008.