

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
SYLVIA ROYCE**

Case No. 08 Civ. 6259 (JGK)

ECF CASE

DECLARATION OF SYLVIA ROYCE

I, Sylvia Royce, declare:

1. I am a resident of the District of Columbia over the age of 18. I have personal knowledge of the facts stated in this declaration.
2. I am an attorney in private practice. From 1977 to 1982, I was an Assistant U.S. Attorney for the District of Columbia. I then served from 1982 to 2000 in the Criminal Division and the Civil Division of the U.S. Department of Justice, where I was Chief of International Prisoner Transfer from 1995 to 2000. I am a member of the District of Columbia Bar and the

National Association of Criminal Defense Lawyers. I am also on the list of counsel qualified to represent persons accused of crimes before the International Criminal Court in the Hague.

3. My law practice includes the representation of individuals imprisoned in the United States who are seeking to be transferred to their home countries to serve out the remainder of their prison sentences. I also represent Mohammedou Ould Salahi, a prisoner who has been held at Guantánamo Bay as an enemy combatant since 2002, in connection with a pending habeas corpus petition and lawsuit that he filed in the United States District Court for the District of Columbia, No. 1:05-cv-569, and in connection with other lawsuits he has filed pursuant to the Freedom of Information Act and the Detainee Treatment Act. I have been representing Mr. Salahi *pro bono*, and hence at my own expense, since February 2005.

4. Mr. Salahi is a citizen of Mauritania who formerly lived in Germany and Canada, where he obtained landed immigrant status. The United States alleges that he acted as a liaison between al Qaeda members close to Osama bin Laden and a group of Islamic radicals living in Hamburg, Germany, some of whom planned or participated in the September 11 attacks.

5. In connection with my representation of Mr. Salahi, I engage in international telephone and e-mail communications that the government could acquire under the FISA Amendments Act. Because of the nature of my communications, the identities and locations of the people with whom I communicate, and the scope of the new law, I believe that my international communications are likely to be acquired under the new law. The possibility that my communications will be acquired compromises my ability to gather information relevant to my representation of Mr. Salahi, to consult with co-counsel about legal strategy, and to exchange information relating to Mr. Salahi's case with human rights researchers and the media.

In connection with my representation of Mr. Salahi, I receive calls from time to time from Mr. Salahi's brother, Yahdih Ould Salahi, who is a university student in Germany. During these calls, I speak to Yahdih about the American judicial system and the progress of the case, and about how the client is adapting to the conditions of detention from a health and psychological point of view. Because of the nature of the allegations against Mr. Salahi and the fact that Mr. Salahi is currently detained at Guantánamo Bay, my communications with Yahdih generally relate to international terrorism and the foreign affairs of the United States. I am particularly concerned that my communications with Yahdih will be acquired because the U.S. government has shown an interest in Mr. Salahi's family in the past. Specifically, during his interrogation, the government interrogators told Mr. Salahi that his family members would be arrested and mistreated if he did not cooperate. The Justice Department's Inspector General exhaustively documented Mr. Salahi's treatment in U.S. custody in a May 2008 report. Office of the Inspector General, Dep't of Justice, *A Review of the FBI's Involvement in and Observation of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq* (May 2008).

6. I also exchange calls and emails concerning Mr. Salahi's case with co-counsel Brahim Ould Ebety, a Mauritanian attorney, and Emmanuel Altit, a French barrister. In these communications, we discuss, among other things, legal strategy and the U.S. government's policies with respect to the detention of prisoners at Guantánamo Bay. These communications are extremely important to my representation of Mr. Salahi for at least two reasons. First, when detainees have been released in the past, a significant factor contributing to their release has been pressure from foreign governments. My communications with co-counsel abroad are an important means of gauging whether we have information that may help build such pressure. Second, when and if the government releases Mr. Salahi, he will want to go back to Mauritania.

The conditions he will face at that time potentially range from freedom through conditional release to incarceration. I need to talk to Mr. Ebety to evaluate these conditions – the more so now that the regime governing Mauritania has abruptly changed due to a coup.

7. The risk that the government will monitor my communications with co-counsel puts me in a dilemma: I would like to have an open exchange of views on legal strategy with my co-counsel, but I have a duty not to allow client confidences and legal strategy to be captured by persons outside the attorney-client relationship, and least of all by the U.S. government, which in this case is the opposing party. To protect my client, my co-counsel and I are compelled to limit the information we share by telephone and e-mail. In some instances, my co-counsel and I exchange generalities rather than specifics. In some instances we decide that we cannot exchange the relevant information at all. Where information is both especially important and especially sensitive, I have to travel to share information, views and ideas that I would otherwise have been able to exchange by telephone or e-mail. Most recently, I went to New York City to meet with Mr. Altit and another lawyer to talk about Mr. Salahi's case, but I also expect to travel abroad in the future to meet with co-counsel and I expect to exchange information in our meetings in person that I would not exchange by telephone or e-mail.

8. In connection with my representation of Mr. Salahi, I also communicate with foreign journalists working for print media such as *Der Spiegel* and the *Toronto Globe and Mail*, and with human rights organizations with offices outside the United States. These communications include discussions of the policies of the U.S. government relating to the detention and interrogation of enemy combatants, the connections or lack thereof between my client and others held at Guantánamo, and the propriety or impropriety of government decisions with respect to classification of national security information. My journalistic and human rights

contacts approach me from time to time with information they have obtained by interviewing persons whose testimony may be material to Mr. Salahi's case. Again, because of the nature of the allegations against Mr. Salahi and the fact that Mr. Salahi is detained at Guantánamo Bay, many of these communications relate to international terrorism or the foreign affairs of the United States. The increased risk of government surveillance means that in some cases journalists and researchers will limit the information they share with me, or that I must limit the information I share with them. For example, in a recent telephone call I cut off a German journalist because the information we were discussing, which related to a potential witness, was not something to which I would want the government to be privy.

9. In sum, the new law compromises my ability to gather information that is relevant and necessary to my representation of Mr. Salahi, to consult with co-counsel about legal strategy, and to exchange information relating to Mr. Salahi's case with human rights researchers and journalists. The new law substantially undermines my ability to represent my client.

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



SYLVIA ROYCE

Executed at Washington, D.C., on September 4, 2008.