

**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
JOHN WALSH**

Case No. 08 Civ. 6259 (JGK)

ECF CASE

DECLARATION OF JOHN WALSH

I, John Walsh, declare:

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

2. I received a B.A. in Theology from Georgetown University and an M.A. in Public Policy from Johns Hopkins University. I am currently the Senior Associate responsible for Andes and Drug Policy at the Washington Office on Latin America ("WOLA"), which is located in Washington, D.C. My responsibilities include research and advocacy on U.S. policy towards the Andean region, especially as it relates to democracy, drug policy and human rights issues. I

also conduct research and advocacy on U.S. drug policy in relation to Mexico and Central America, and in relation to the United Nations drug control system.

3. Founded in 1974, WOLA is a non-governmental organization (NGO) that promotes human rights, democracy, and social justice in Latin America, with a focus on U.S. foreign policy toward the region. With a staff of approximately twenty, WOLA works closely with human rights and social justice activists from across Latin America, as well as with government officials, community leaders, and academics. WOLA serves as a resource for Latin American NGOs and as a valuable interlocutor between them and U.S. policymakers. WOLA plays a leadership role in several advocacy coalitions, and organizes workshops, conferences, roundtables, and briefings designed to stimulate debate and policy reform. In all of our work, WOLA seeks to influence U.S. policy toward Latin America and to influence the policies and practices of Latin American governments in support of the defense of human rights, the consolidation of democracy, and equitable economic growth. WOLA also works to fortify the capacity of civil society organizations in Latin America so that they may also develop and advocate policies to achieve these aims.

4. WOLA is participating in this lawsuit because the FISA Amendments Act compromises our ability to conduct research and advocacy. It is our understanding that the new law permits the U.S. government to conduct foreign intelligence surveillance that is directed not at specific individuals, telephone numbers, and e-mail addresses but rather at specific regions or even countries, thereby sweeping up millions of conversations into a dragnet. We also understand that the law allows the U.S. government to acquire our international communications without a warrant so long as the surveillance is directed at people outside the United States –

even if there is no reason to believe that we or the people with whom we communicate are engaged in criminal activity or espionage.

5. I believe that my communications, and the communications of my colleagues at WOLA, are likely to be acquired under the new law. In carrying out WOLA's mission, I and other WOLA staff frequently communicate by telephone and e-mail with individuals located abroad, especially in countries where WOLA is most active, including Argentina, Bolivia, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay, Peru, and Venezuela. The relationship between the U.S. government and the governments of some of these countries is antagonistic. Many Venezuelans, for example, believe that the U.S. government actively supported the April 2002 coup attempt against their democratically elected president, Hugo Chávez. Because the relationship between the United States and Venezuela's Chávez's administration is hostile, the U.S. government certainly has a motive for monitoring the activities and communications both of people associated with or supportive of Chávez's administration and of critics or dissidents opposed to it. I am in contact with people who fall into both categories. In my communications with them, we routinely discuss issues relating to the relationship between Venezuela and the United States and U.S. foreign policy more generally. As I understand the new law, there is nothing that would prevent the U.S. government from "targeting" my contacts in Venezuela in order to collect the very information that I am exchanging with them.

6. WOLA staff members also communicate with individuals in El Salvador who have been charged with crimes under that country's broadly-written anti-terrorism legislation, which allows the attorney general to seek lengthy prison terms for demonstrators who participate in social protests during which confrontations may occur. In connection with our research and

advocacy around the issue of the criminalization of social protest in El Salvador, WOLA staff members have communicated via e-mail and phone with leaders of the protest movement, some of whom were charged under the anti-terrorism statute. Because social protest has been linked to terrorism in this context, I believe that our e-mail and telephone communications with contacts in El Salvador are likely to be intercepted under the challenged law.

7. I and my colleagues at WOLA depend on our ability to communicate confidentially via telephone and e-mail to forge strong relationships with individuals and organizations abroad. These relationships, and the communications they engender, are essential to our ability to provide insightful and well-grounded analysis to Congress, the administration, the media, and the broader public. Especially in countries in which politics and violence are intertwined, the confidentiality of our international communications is integral to our research, advocacy, and coalition-building work.

8. Many of WOLA's partners and sources share information with us on condition that we keep their identities confidential. I recently completed an in-depth study, entitled "Chemical Reactions," about the aerial herbicide spraying operations ("fumigation") that have been the centerpiece of the Colombian government's effort to curb coca cultivation and cocaine production. The fumigation program has received strong financial, logistical and political support from the U.S. government under both the Clinton and G.W. Bush administrations. Our report was highly critical of the program, concluding that spraying has contributed to the spread of coca cultivation to more remote regions, thereby exacerbating the adverse effects of drug production and drug control on human health and the environment. In order to complete this study, I communicated frequently with Colombian experts with scientific training and extensive field experience in conservation and rural development. These experts have held important

positions in Colombian state agencies, as well as at NGOs. I met with them in person in Colombia, but I also communicated with them by telephone and we exchanged drafts of the report by e-mail. Certain of these experts, especially those who had access to information by virtue of their past or current government positions, did not want their involvement publicized and would have been reluctant to communicate with me by telephone or e-mail if they believed it likely that their identities would be disclosed to the U.S. government as a result. Some of my contacts feared they would lose their access to vital information if their identities were publicized. Others feared that disclosure of their identities would invite the attention of illegal armed groups that are active in coca cultivation, drug trafficking, and organized crime along Colombia's Pacific coast where they often conduct their research.

9. Confidentiality is also essential to my work in connection with WOLA's global drug policy advocacy. As part of this work, other WOLA staff and I have been directly involved in facilitating off-the-record dialogues on drug policy involving Latin American and European government officials and non-governmental experts. The aim is to influence ongoing drug policy deliberations at the United Nations that will conclude with a high-level ministerial meeting and a new UN political declaration in March 2009 that is meant to set the agenda for the next decade of global drug control policy. Our partner in organizing these informal dialogues is the Transnational Institute (TNI), an NGO based in the Netherlands. The four dialogues we have held to date have been hosted by the governments of Uruguay, Mexico, Ecuador and Bolivia; another session is being planned for Brazil. Many of the proposals discussed at the dialogues emphasize human rights protections, harm reduction approaches, and alternative livelihoods strategies that are very much at odds with official U.S. positions. While the dialogues themselves take place in person and entirely off-the-record, the preparation and the follow-up is

all done by telephone and e-mail, and involves communications with NGOs, academics and government officials in numerous Latin American and European countries. The success of these dialogues on controversial issues depends on our ability to communicate confidentially and frankly with our NGO partners and with participating government officials.

10. By greatly increasing the likelihood that my international communications will be acquired, retained, analyzed and disseminated by the U.S. government, the new surveillance law infringes on my ability to build coalitions and gather information that is essential to my advocacy work. Many of my professional contacts live in extremely dangerous and polarized environments. Therefore, it is crucial that they be perceived as neutral or non-aligned actors. For example, in an atmosphere of mutual hostility between the current U.S. and Venezuelan governments, with rhetoric on the part of Venezuelan officials portraying government critics and opponents as allies and agents of the U.S. government, the mere suspicion that communications undertaken in confidence with me may be secretly accessed by the U.S. government, without meaningful oversight, threatens to chill the candid communications central to my work. If the U.S. government is monitoring or even perceived to be monitoring my communications, my professional contacts will be reluctant to candidly share information crucial to understanding events and trends on the ground in the region. Similarly, many participants in the international drug policy dialogues discussed above will be reluctant to continue their discussions with me and other WOLA staff members if they believe our communications are being monitored. Without their input, feedback, and support, it will be much more difficult for WOLA to develop common international strategies to promote much-needed drug policy reform.

11. The threat of U.S. surveillance has particularly grave consequences for WOLA's work in Cuba, the only Latin American country included on the U.S. State Department's list of

state sponsors of terrorism. Because of increased travel restrictions, over the last few years it has become harder for Cubans to enter the United States and for U.S. citizens to enter Cuba. As a result, WOLA staff rely heavily on telephone and e-mail to communicate with individuals living in Cuba. Many of our contacts in Cuba believe that their calls could be monitored by the Cuban government. While this limits their ability to speak freely to us about Cuban government policy, in the past our Cuban contacts have been willing to discuss U.S. policy – and in particular the long-standing U.S. embargo – quite freely by both telephone and e-mail. The FISA Amendments Act threatens to curtail that communication drastically because many Cubans who are critical of U.S. policy, both dissidents and non-dissidents, believe that they will be denied visas to the United States if they express their opposition to the U.S. embargo. If these individuals believe that their discussions about U.S. policy toward Cuba may be monitored by U.S. officials, it will be far more difficult for us to have frank and useful conversations with Cubans about their views toward U.S. policy.

12. While some of WOLA's contacts and partner organizations abroad may communicate with us less regularly and less candidly if they believe their communications with WOLA are likely to be intercepted by the U.S. government, those who do not know WOLA as well may be reluctant to enter into communication with us at all. This threatens to hamper WOLA's work, which aims to build support among Latin American governments and civil society organizations for rights-respecting reform.

13. In sum, my work – and the work of WOLA more generally – fundamentally relies on U.S.-to-international communications both via e-mail and telephone. It will be far more difficult for WOLA to pursue its work in Latin America on these very important issues if our

partners believe that the U.S. government is able to intercept or gather our communications without meaningful oversight or limit.

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.



JOHN WALSH

Executed at Washington, D.C., on September 11, 2008.