

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE, INC.; JOHN DOE;
AMERICAN CIVIL LIBERTIES UNION; and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

ERIC HOLDER, Jr., in his official capacity as
Attorney General of the United States; ROBERT
MUELLER III, in his official capacity as
Director of the Federal Bureau of Investigation;
and VALERIE CAPRONI, in her official
capacity as Senior Counsel to the Federal
Bureau of Investigation,

Defendants.

THIRD DECLARATION OF
[REDACTED]

04 Civ. 2614 (VM)

~~SEALED~~ **REDACTED**

THIRD DECLARATION OF [REDACTED]

I, [REDACTED] of [REDACTED], do declare:

1. [REDACTED] I was the President [REDACTED]

[REDACTED], an Internet access and consulting business that
[REDACTED] incorporated and located in [REDACTED]

2. In [REDACTED] I personally received from the FBI a National Security
Letter ("NSL") directed at [REDACTED]. Since that time, I have been subject to a gag order that
has prevented me from disclosing, among many other things, that I was served with an
NSL and that I initiated this lawsuit. The gag order prevents me from disclosing non-
sensitive information unrelated to national security and from speaking out – to the press,
to the public, and to my representatives in Congress – about a matter of extraordinary
public concern. I have now been subject to the gag order for more than five years.

The Scope and Impact of the Gag Order

3. The NSL I received in 2004 sought a variety records associated with the email address of one of my clients. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Yet the letter stated that I was required to produce this information to the FBI and that I could not disclose any information about the NSL. Based on my concerns about the legitimacy of the NSL, I filed this lawsuit in April 2004. I have described these events in detail in previous declarations. See Second Decl. of [REDACTED] ¶¶ 4-20 [Dckt. 136]; Decl. of [REDACTED] [Dckt. 28-29] ¶¶ 1-19.

4. The gag order attached to the NSL continues to have serious effects on my ability to communicate and express my views. I continue to be prohibited from, among many other things, even identifying myself as the recipient of an NSL and as a plaintiff in this lawsuit. I am forced to hide an important aspect of my life from my close friends and family members. [REDACTED] the gag order put me in a very difficult position with my clients. I placed a high priority on fostering honest business relationships with my clients, yet I could not inform them that the government had sought information from me and I brought a lawsuit challenging that demand. Nor have I been able to communicate – or coordinate efforts – with other Internet Service Providers who received NSLs and wish to shape the public debate about them. Most significantly, if not

for the gag order I would have engaged extensively in the ongoing debates over the statutes authorizing NSLs and the proposals for legislative reform. My views on the use of NSLs are fundamentally informed by my experience as the recipient of one. I believe I can contribute a perspective that the public – and especially Congress – has not received. Yet I remain prohibited from expressing that perspective. I have described these effects in detail in previous declarations. *See* Second Decl. of [REDACTED] [Dckt. 136] ¶¶ 21-46; Decl. of [REDACTED] [Dckt. 28-29] ¶¶ 20-30.

Ineffectualness of the Gag Order

6. It is my understanding that the government defends the gag order by pointing to harm that it says will follow from alerting the target of the NSL that [REDACTED] is or was a target of investigation. [REDACTED]

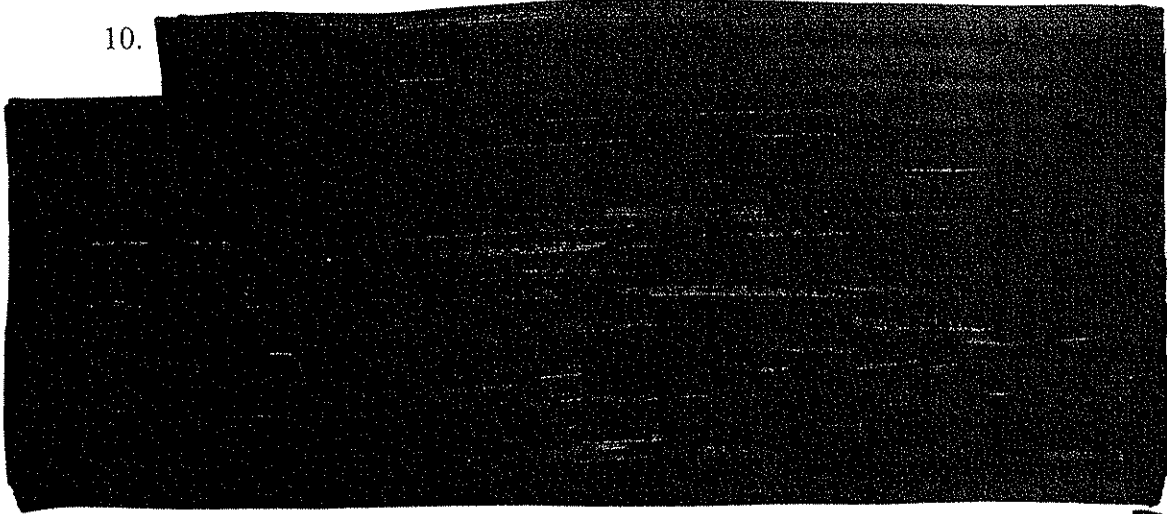
[REDACTED]

7. [REDACTED]

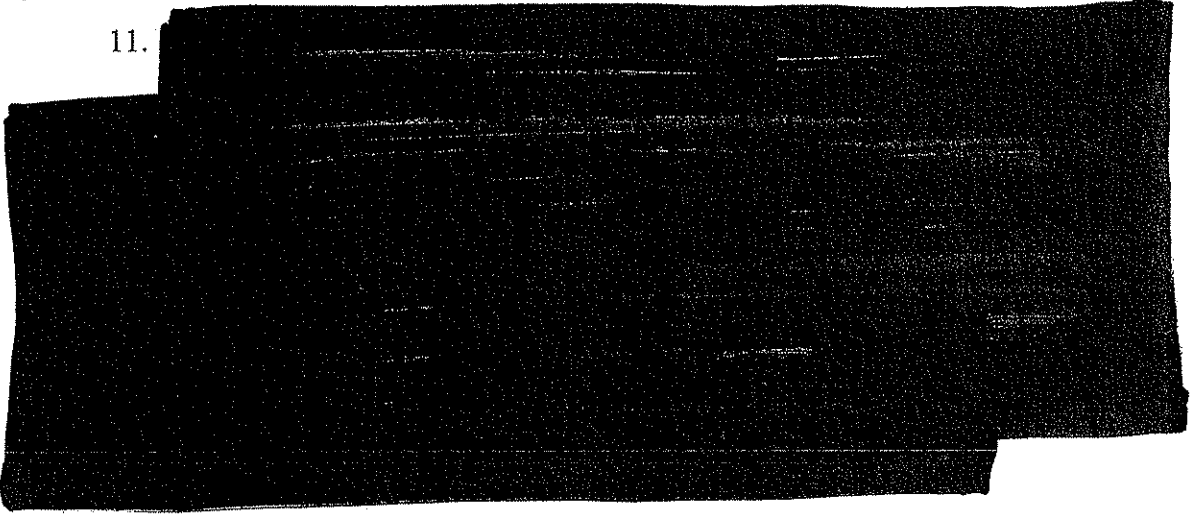
8. [REDACTED]

9. [REDACTED]

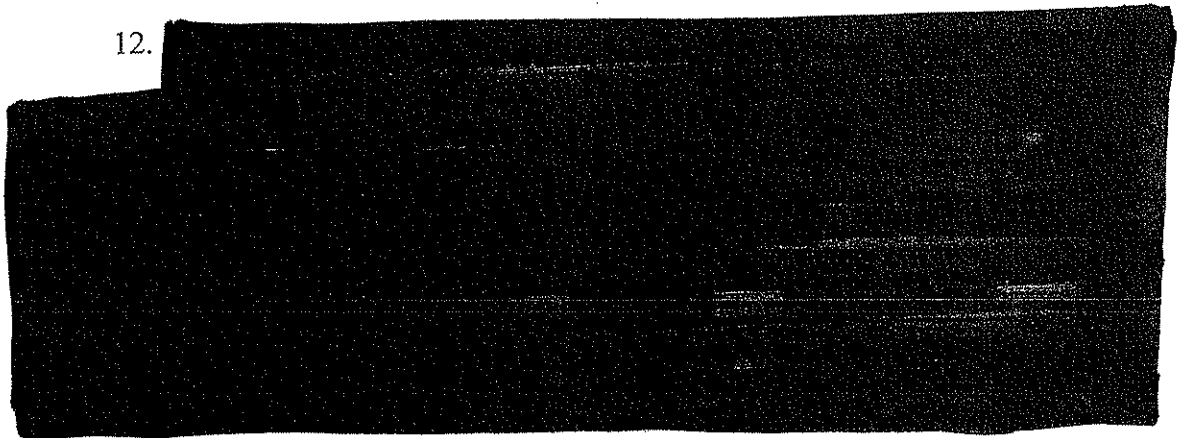
10.



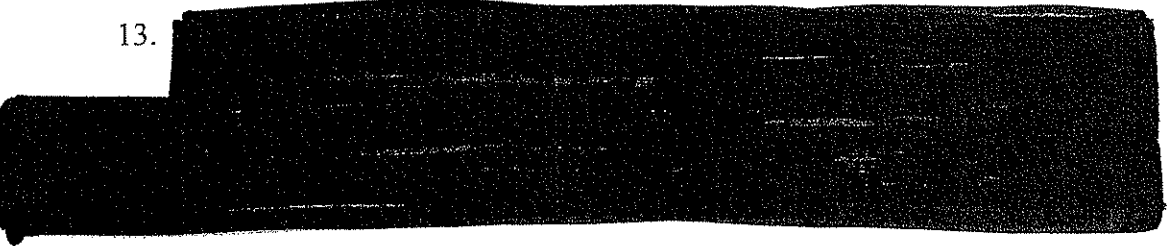
11.



12.



13.



[REDACTED]

14. [REDACTED]

15. [REDACTED]

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 21 day, of August, 2009.

[REDACTED]