APPEAL NO. 06-2095/06-2140

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs - Appellees/Cross - Appellants,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants - Appellants/Cross - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF OF *AMICUS CURIAE* JUDICIAL WATCH, INC.

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BRIEF OF THE *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, Judicial Watch, Inc. ("Judicial Watch") respectfully submits this *amicus curiae* brief in support of Appellants National Security Administration ("NSA"), *et al.* Counsel for all parties have consented to the filing of this *amicus curiae* brief.

INTEREST OF THE *AMICUS CURIAE*

Judicial Watch is a not-for-profit organization that seeks to promote integrity, transparency, and accountability in government, politics, and the law. Among other activities, Judicial Watch initiates and prosecutes public interest lawsuits, monitors legal decisions and significant developments in the law, and files *amicus curiae* briefs on issues of public concern. Judicial Watch is participating as an *amicus curiae* in this matter because the case raises not only important questions about executive power and civil liberties in a time of war, but also the role of the courts in reviewing executive action and the integrity of court process. In Judicial Watch's view, the District Court overstepped long-established limits on judicial authority in order to reach the weighty, constitutional questions raised by this litigation. It also attempted to decide these very important constitutional questions without the benefit of anything approaching a well-

developed factual record, conflated the plaintiffs' alleged First and Fourth Amendment injuries, and disregarded well-established precedent and ordinary rules of procedure.[1] The result was not only the hasty and injudicious entry of a permanent injunction against an on-going foreign intelligence gathering operation during a time of war, but also the patently flawed entry of summary judgment against the government. The District Court's ruling must, respectfully, be vacated.

ARGUMENT

I. Background.

On August 17, 2006, the U.S. District Court for the Eastern District of Michigan (hereinafter "District Court") held that a publicly acknowledged, warrantless surveillance program (hereinafter "TSP") run by the National Security Agency (hereinafter "NSA") was unconstitutional. The District Court entered summary judgment in the plaintiffs' favor and permanently enjoined the NSA from engaging in any further warrantless surveillance. In so holding, the District Court effectively reduced the universe of relevant facts to public statements by the government about the TSP and the plaintiffs' assertions of a "well-founded belief"

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[1] After the District Court issued its decision, it was discovered that the trial judge served as a trustee of a foundation that had given $125,000 in grants to Plaintiff American Civil Liberties Union of Michigan over several years, albeit for matters unrelated to the TSP. "A Matter of Appearances," *New York Times*, August 24, 2006 at A26.

that their international communications had been intercepted. The publicly admitted facts regarding the TSP consist of three general statements:

> (1) the TSP exists; (2) it operates without warrants; (3) it targets communications where one party to the communication is outside the United States, and the government has a reasonable basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda.

ACLU v. NSA, 438 F. Supp. 2d 754, 764-65 (E.D. Mich. 2006). In addition to claiming a "well-founded belief" that their international communications had been intercepted, the plaintiffs also claimed that the TSP had injured their ability to communicate with persons in the Middle East and Asia.

The paucity of facts -- including, most importantly, whether the plaintiffs themselves were ever subject to the TSP -- made it impossible for the District Court to properly consider *any* of the complex statutory or constitutional questions raised by this lawsuit. That the District Court nonetheless ruled on these important questions in a factual vacuum and in disregard for well-established precedent and ordinary rules of procedure was itself a judicial usurpation of power and a violation of separation of powers.

II. Plaintiffs Lack Constitutional Standing.

It is axiomatic that federal courts should decide only actual cases or controversies. U.S. Const., art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). For a court to rule on a matter in which a plaintiff failed to demonstrate a concrete and particularized, actual or imminent injury is akin to the issuance of an advisory opinion. As a result, establishing standing is an absolute requirement, and federal courts are constitutionally forbidden from considering cases in which standing has not been established. *See Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 10 (2004).

None of the plaintiffs actually *knows* whether their communications have been intercepted by the TSP. In fact, all the plaintiffs are capable of asserting is a "well-founded belief" that their electronic communications are being intercepted by the NSA.[2] Complaint at ¶¶ 60, 71, 76, 80, 87, 94, 115, 122, 129, 134, 140, 146, 163, 173, 181, 190. Such speculative injuries do not constitute an "injury-in-fact"

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[2] In fact, a few of the plaintiffs fail to claim even a "well-founded belief" that their communications are subject to TSP. These plaintiffs, Council on American-Islamic Relations (CAIR), CAIR Michigan, and James Bamford, present no evidence that they are subject to, or even suspect they are subject to, the TSP. Two of the plaintiffs' declarations do not purport to allege a "well-founded belief" that they have been surveilled under the TSP, but instead assert only that their communications "may be intercepted." *See* Dratel Decl. at ¶ 10; Rubin Decl. at ¶ 12.

for purposes of establishing standing. *Lujan*, 504 U.S. at 560. Nor can they be said to be "concrete and particularized, and actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560-61.

In a case quite similar to the case at bar, *Halkin v. Helms*, 690 F.2d 977, 997 (D.C. Cir. 1982) (hereinafter "*Halkin II*"), the Court found that individuals and organizations allegedly subject to a warrantless surveillance program were "incapable of demonstrating that they ha[d] standing to challenge" the program. The Court held that the plaintiffs could not show any injury because the "NSA is prohibited from disclosing whether it acquired any of plaintiff's communications." *Id.* In other words, without establishing that they were themselves subjected to the surveillance, the plaintiffs in *Halkin II* could not demonstrate any injury, and, therefore, lacked Article III standing.

This is precisely the case before the Court today. The NSA has not disclosed any information about the identity of persons whose communications have been subject to the TSP or the identity of persons whose communications will be subject to the TSP in the future. Therefore, the plaintiffs do not know and cannot ascertain whether their communications have been or will be intercepted by the TSP. Without this essential information, the plaintiffs cannot demonstrate that they have standing to assert their various claims arising under the Foreign

Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.* (hereinafter "FISA"), the Fourth Amendment, or their other, related claims. Plaintiffs' resulting inability to demonstrate Article III standing makes these claims nonjusticiable.[3]

Instead of reaching the obvious conclusion that the plaintiffs lack standing, the District Court conflated the plaintiffs' "invasion of privacy" injury allegations with an alleged "informational" injury under the First Amendment. Although the only reason the District Court ultimately gave for finding that the TSP violated the First Amendment was because it purportedly violated both FISA and the Fourth Amendment, the District Court nonetheless found that the plaintiffs had standing

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[3] Of the twelve plaintiffs listed as parties in the complaint, six provide absolutely no evidentiary support for their claims. These plaintiffs, American Civil Liberties Union ("ACLU"), ACLU Foundation, Counsel of American-Islamic Relations ("CAIR"), Greenpeace, James Bamford, and Christopher Hitchens, provide no declarations in support of their motion for summary judgment. In fact, there is no evidence in the record that these plaintiffs even claimed to be injured, much less claimed that the TSP caused their injuries. The District Court nonetheless entered judgment in their favor.

Of the remaining six plaintiffs who submitted declarations to the District Court, the plaintiffs relied on only three declarations to establish allegedly undisputed facts. The declarations of these three plaintiffs, National Association of Criminal Defense Lawyers (represented by Nancy Hollander, Joshua L. Dratel, and William W. Swor), Larry Diamond, and Tara McKelvey, are the only declarations relied on to support the plaintiffs' statement of undisputed facts. These declarations, together with the government's very limited public statements about the TSP, make up the entire universe of facts on which the District Court based its ruling.

because of the alleged injury to their ability to communicate with persons in the Middle East and Asia. *ACLU*, 438 F. Supp. 2d at 771.

However, the plaintiffs do not claim that it is the illegality of the TSP that is causing these persons to cease communicating with them. *Id.* They do not claim, for example, that, but for the illegality of the program, these persons would continue to communicate with them. *Id.* Nor did the plaintiffs claim that, if the government obtained search warrants or judicial orders approving the surveillance, their sources, clients, and potential witnesses would begin communicating with them again. Rather, it is obvious from the plaintiffs' allegations that it was the public revelation of the TSP, not its legality or illegality, that allegedly chilled their ability to communicate with persons in the Middle East and Asia. As a result, the "casual connection between the injury complained of" and the likely redressability of the injury by a favorable decision is lacking. *Lujan*, 504 U.S. at 560-61. The plaintiffs do not have standing for their "informational" injury under the First Amendment either.

Nonetheless, the District Court clearly *wanted* to reach the merits of this case. The District Court declared:

> [I]t is important to note that if the court were to deny standing based on the unsubstantiated minor distinctions drawn by Defendants, the President's actions in warrantless wiretapping, in contravention of

> FISA, Title III, and the First and Fourth Amendments, would be immunized from judicial scrutiny. It was never the intent of the Framers to give the President such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the *Bill of Rights*.

ACLU, 438 F. Supp. 2d at 771. Whether one branch of government has overstepped its constitutional authority is not an excuse for another branch of government to trample other, well-established constitutional principals. The District Court is no more above the law than the President. Permitting the District Court to bypass Article III standing to declare a foreign intelligence information gathering program unconstitutional and to enjoin its continued operation does not make the Republic any safer or any freer. Liberty cannot be secured through the demise of constitutional principles that a particular judge is willing to sacrifice. The plaintiffs do no have standing to challenge the TSP and cannot gather facts necessary to challenge the TSP, and the District Court overstepped its Article III authority finding otherwise.

III. Plaintiffs' FISA Claims.

In entering summary judgment in the plaintiffs' favor and permanently enjoining the TSP, the District Court made broad, sweeping conclusions that "the President has acted, undisputedly, as FISA forbids" and "[t]he President, undisputedly, has violated the provisions of FISA for a five-year period." *ACLU*,

438 F. Supp. 2d at 778. As with the District Court's ruling regarding standing, it is impossible to find any violation of FISA based on the government's limited public statements about the TSP.

Before any violation of a statute can be found, there obviously must be a determination that the statute applies to the case at hand. While FISA purports to govern "electronic surveillance" of foreign intelligence communications, FISA defines "electronic surveillance" as follows:

> (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent *by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person*, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or
>
> (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, *if such acquisition occurs in the United States*, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of Title 18; or
>
> (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, *and if both the sender and all intended recipients are located within the United States*; or

> (4) the installation or use of an electronic, mechanical, or other surveillance device *in the United States* for monitoring to acquire information, other than a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

50 U.S.C. § 1801(f) (emphasis added).

This definition necessarily requires an inquiry into numerous factual matters such as: (1) the types of communications acquired; (2) the location of the parties to the acquired communications; (3) the targets of the surveillance; (4) the locations where the acquisition occurred; (5) the locations of any surveillance devices; and (6) the reasonableness of the parties' expectation of privacy. *Id.* Without answering these and other factual questions, it is legally impossible to conclude that a FISA violation has occurred.

The District Court failed to address any of these factual matters. It made no finding that the TSP "intentionally target[ed]" specific "United States persons" as opposed to intercepting communications to and from persons targeted overseas. *See* 50 U.S.C. § 1801(f)(1). It made no finding that the acquisition of any intercepted communication took place in the United States as opposed to taking place somewhere abroad or via space-based satellites. *See* 50 U.S.C. § 1801(f)(2). It made no finding that the TSP resulted in the interception of radio

communications between persons located in the United States.[4] *See* 50 U.S.C. § 1801(f)(3). It made no finding that the TSP made use of surveillance devices located in the United States, as opposed to devices located elsewhere, in order to acquire information "other than from a wire or radio communication." *See* 50 U.S.C. § 1801(f)(4). Nor did it make any finding about the reasonableness of the plaintiffs' purported expectations of privacy in their international communications with persons having ties to suspected terrorists and insurgents.[5] *See Halkin II*, 690 F.2d at 1003 n.96 ("The universe of relationships, movements, and activities of persons and the manner in which they were carried out, comprehended by the vague descriptions of the surveillances here at issue, is simply too broad to permit" an analysis of the plaintiffs' expectations of privacy); 50 U.S.C. §§ 1801(f)(1),(3), and (4). In short, the District Court made none of the factual findings necessary to determine whether FISA even applies, and, based on the

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[4] Such a finding would have been contrary to the government's public statements about the intercepted communications, which represented that only international communications were intercepted.

[5] Attorney Nancy Hollander submitted a declaration stating that she frequently engages in international communications with persons who have alleged connections with terrorist organizations, as did Attorney William Swor. Journalist Tara McKelvey declared that she has international communications with sources who are suspected of helping the insurgents in Iraq. *ACLU*, 438 F. Supp. 2d at 765 n.7.

sparse factual record before it, the District Court was not in a position to make any such findings. The public statements made by the government about the TSP simply do not answer these foundational questions.

Another prerequisite to any determination that a violation of a statute has occurred is that the plaintiff bringing the claim must fall under the protections of the statute. FISA creates a civil cause of action for an "aggrieved person" "who has been subjected to an electronic surveillance . . . in violation of section 1809 of this title."[6] 50 U.S.C. § 1810. FISA defines an "aggrieved person" as "a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance." 50 U.S.C. § 1801(k). The District Court made no finding that any of the plaintiffs were, in fact, subject to electronic surveillance. The District Court apparently relied only on a few of the plaintiffs' allegations of "well-founded beliefs" that some type of undefined "interception" had occurred and concluded that "Plaintiffs' declarations establish that their communications *would* be monitored under the TSP." *ACLU*, 438 F. Supp. 2d at 758, 765 (emphasis added). No matter how well-founded a belief might be, however, it is no substitute for admissible evidence, and there is

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[6] Section 1809 prohibits engaging in "electronic surveillance under color of law except as authorized by statute" or disclosing or using "information obtained under color of law by electronic surveillance." 50 U.S.C. § 1809(a).

no evidence in the public record, admissible or otherwise, demonstrating that any of the plaintiffs were actually subject to electronic surveillance within the definition of FISA.[7] Given only a "well-founded belief" of surveillance rather than facts that are admissible in evidence, there was no basis for entering summary judgment in the plaintiffs' favor. Fed. R. Civ. P. 56(e). Nor would it have been proper for the District Court to make factual findings of any sort on a summary judgment motion. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 249-50 (1986).

IV. Plaintiffs' Fourth Amendment Claims.

It is well-established that the Fourth Amendment's protections are personal and challenges to alleged violations of the Fourth Amendment must be asserted by one who claims an injury to his or her Fourth Amendment rights. *Rakas v. Illinois*, 439 U.S. 128, 136-39 (1978); *Ellsberg v. Mitchell*, 709 F.2d 51, 665 (D.C. Cir. 1983) ("An essential element of each plaintiff's [Fourth Amendment] case is proof that he himself has been injured."). For the same reasons that the District Court overstepped its authority in ruling on the plaintiffs' standing and FISA claims,

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[7] This is in marked contrast to another legal challenge arising from the TSP currently pending in the U.S. District Court for the District of Oregon. In *Al-Harmain Islamic Foundation, Inc. v. Bush*, Case No. 06-247-KI, the plaintiffs purport to have evidence, in the form of logs inadvertently disclosed by the Office of Foreign Assets Control, demonstrating that their communications were intercepted. 2006 U.S. Dist. LEXIS 64102 (D. Or. Sept. 7, 2006).

namely by issuing a ruling despite the lack of a necessary factual predicate, the District Court overstepped its authority in ruling on the plaintiffs' Fourth Amendment claims as well.

This conclusion is further demonstrated by the fact that the District Court appears to have overlooked an entire body of Fourth Amendment jurisprudence regarding the gathering of foreign intelligence information. Prior to the enactment of FISA, virtually every court that addressed the issue concluded that the President had the inherent power to conduct warrantless electronic surveillance to collect foreign intelligence information and that such surveillance constituted an exception to the warrant requirement of the Fourth Amendment. *See United States v. Truong Dinh Hung*, 629 F.2d 908, 912-14 (4th Cir. 1980), *cert. denied*, 454 U.S. 1144 (1982); *United States v. Buck*, 548 F.2d 871, 875 (9th Cir.), *cert. denied*, 434 U.S. 890 (1977); *United States v. Butenko*, 494 F.2d 593, 605 (3d Cir.) (*en banc), cert. denied*, 419 U.S. 881 (1974); *United States v. Brown*, 484 F.2d 418, 426 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *but see Zweibon v. Mitchell*, 516 F.2d 594, 633-651 (D.C. Cir. 1975) (dicta), *cert. denied*, 425 U.S. 944 (1976).

The U.S. Supreme Court specifically declined to address this issue in *United States v. United States District Court [Keith, J.]*, 407 U.S. 297, 308 (1972) (hereinafter "*Keith*"), but it previously had made clear that the requirements of the

Fourth Amendment could differ based on the differing governmental interests at stake. *See Camara v. Municipal Court*, 387 U.S. 523 (1967). In *Keith*, the Court observed that the governmental interests presented in national security investigations differ substantially from those presented in traditional criminal investigations. 407 U.S. at 321-324. While the Court ultimately held that a warrant was required under the Fourth Amendment in the domestic security context, it declined to address the issue of warrantless foreign intelligence searches: "We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents." *Keith*, 407 U.S. at 321-22. The clear implication of the Court's discussion in *Keith*, however, was that different standards may be compatible with the Fourth Amendment depending on the different purposes and practical considerations involved. 407 U.S. at 321-24. The Court observed:

> Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the governmental interest to be enforced and the nature of citizen rights deserving protection.

Id. at 322-23; *see also Halkin II*, 690 F.2d at 1003, n.96 ("There is no *per se* rule requiring that surveillance of United States persons for foreign intelligence purposes be conducted only upon prior *judicial* notice.").

Moreover, any Fourth Amendment inquiry hinges on whether a search was reasonable (*Illinois v. McArthur*, 531 U.S. 326, 330 (2001)), and reasonableness is a purely factual inquiry. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). When confronted with a legal challenge to a national security surveillance program, the court in *Halkin II* declined to even try to decide the issue:

> [I]t would first have to be determined whether the various instances of surveillance involved were subject to prior judicial approval, or instead qualified as exceptions to the general presumption that a warrant is required, and if the latter, whether the warrantless searches or seizures themselves were reasonable. Neither determination is possible in the factual vacuum presented here. The notion of deciding either constitutional question -- whether a warrant is required in certain foreign intelligence surveillances, and if not, whether certain activities are "reasonable" -- on a record devoid of any details that might serve even to identify the alleged victim of a violation is ludicrous. *It calls for the issuance of an opinion on a case in which the crucial facts are all necessarily hypothesized -- the textbook example of a case falling without the federal judicial power.*

Halkin II, 690 F. 2d 1003, n. 96 (emphasis added); *see also Ellsberg*, 709 F.2d at 66 ("without any developed factual record, it would be inappropriate . . . to try to decide whether or when wiretaps on foreign governments, their agents, or collaborators require prior judicial approval.").

Plaintiffs here were unable to establish whether TSP was reasonable, as they did not even possess the facts necessary to know whether they themselves were subject to it. The District Court did not possess such facts either, as it admittedly relied only on the government's public statements about the TSP. The record is simply devoid of the type of facts required to undertake an analysis of the reasonableness of the TSP. Nonetheless, the District Court summarily concluded that the TSP violated the Fourth Amendment:

> [T]he wiretapping program here in litigation has undisputedly been continued for at least five years, it has undisputedly been implemented without regard to FISA and of course the more stringent standards of Title III, and obviously in violation of the Fourth Amendment.

ACLU, 438 F. Supp. 2d at 775. By ruling in this factual vacuum, the District Court issued what the court in *Halkin II* characterized as "tantamount to the issuance of an advisory opinion." *Halkin II*, 690 F.2d at 1000.

V. Plaintiffs' Separation of Powers Claims.

In ruling on the plaintiffs' "Separation of Powers" claim, the District Court found, citing *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952), that "[t]he President has acted, undisputedly, as FISA forbids. FISA is the expressed statutory policy of our Congress. The presidential power, therefore, was exercised at its lowest ebb and cannot be sustained." *ACLU*, 438 F. Supp. 2d at 778.

Because the District Court's analysis of the plaintiffs' separation of powers claim rests solely on the foundation of the plaintiffs' other factually deficient claims, the District Court's separation of powers analysis is deficient as well. The District Court did not have the necessary factual predicate to decide the plaintiffs' FISA claim, and, as a result, the District Court's faulty FISA ruling cannot provide the foundation for a ruling on the plaintiffs' separation of powers claim either.

VI. Plaintiffs' First Amendment Claims.

In ruling on the plaintiffs' First Amendment claims, the District Court likewise relied on its rulings with respect to the plaintiffs' FISA and Fourth Amendment claims:

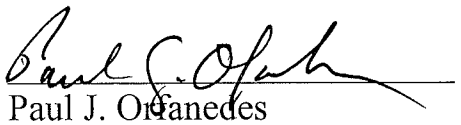
> The President of the United States, a creature of the same Constitution which gave us these Amendments, has undisputedly violated the Fourth in failing to procure judicial orders as required by FISA, and accordingly has violated the First Amendment Rights of these Plaintiffs as well.

ACLU, 438 F. Supp. 2d at 776. Again, the same factual deficiency that dealt a fatal blow to the plaintiffs' FISA and Fourth Amendment claims deals the same fatal blow to the plaintiffs' First Amendment claims.

CONCLUSION

Finding the proper balance between the need for security and the preservation of civil liberties in a time of war is an extraordinarily complicated and important matter. At a minimum, it requires a highly developed factual record and a careful and thorough analysis of competing constitutional and statutory provisions. For the District Court to attempt to decide such weighty questions based only on the governments' very limited public statements about the TSP, the plaintiffs' "well-founded belief" that their international communications have been intercepted, and their assertion that persons in the Middle East and Asia are no longer willing to communicate with them by telephone and via the internet as a result of the TSP, clearly overstepped the limits of judicial authority. The fact that the District Court declared a foreign intelligence gathering program to be unconstitutional and permanently enjoin its continued operation only further highlights the egregiousness of the ruling. While the plaintiffs ultimately may not have the opportunity to develop the additional facts the District Court should have required of them in order to find in their favor, such circumstances do not justify a departure from customary limits on what is a justiciable controversy. The District Court's rulings should be vacated.

Respectfully submitted,



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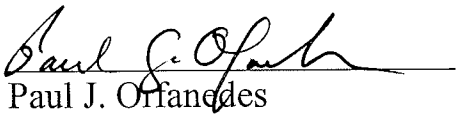
CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that the foregoing Brief of Amicus Curiae complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B). The brief contains 4,928 words, as counted by Corel WordPerfect 10.

October 24, 2006



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CERTIFICATE OF SERVICE

I hereby certify that, on October 24, 2006, two (2) true and correct copies of the foregoing Brief of Amicus Curiae Judicial Watch, Inc. were served via first-class U.S. mail, postage prepaid, on the following:

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