

demand's validity. Section 2709 also permanently gags those served with NSLs from disclosing to any other person that the FBI sought or obtained information from them.

2. An agent of defendant FBI served an NSL on plaintiff in [REDACTED]. The NSL directed [REDACTED] to disclose the name, [REDACTED] addresses, [REDACTED] and other sensitive information relating to one of [REDACTED] clients. The NSL, a copy of which is attached hereto, fails to specify any means by which [REDACTED] can challenge the validity of the FBI's demand. It also prohibits [REDACTED] and "any officer, employee or agent" of [REDACTED] from "disclosing to any person" that the FBI has sought information. To avoid violating the gag provision, plaintiffs have filed this Complaint under seal.

3. Plaintiffs submit that Section 2709 is unconstitutional on its face and that the [REDACTED] NSL is invalid. Plaintiffs further submit that the gag provision is unconstitutionally vague, overbroad, and imposes an unlawful prior restraint on speech. Plaintiffs seek a declaration that Section 2709 violates the First, Fourth, and Fifth Amendments; a declaration that the [REDACTED] NSL is invalid; an injunction prohibiting the FBI from seeking to enforce the [REDACTED] NSL; and an injunction prohibiting the FBI's further use of Section 2709 against plaintiffs or others.

JURISDICTION AND VENUE

4. This case arises under the United States Constitution and the laws of the United States and presents a federal question under Article III of the United States Constitution and 28 U.S.C. § 1331. The Court has authority to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* The Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff [REDACTED] is an Internet access and consulting business incorporated and located in [REDACTED]. [REDACTED] President and [REDACTED]. The FBI served the [REDACTED] NSL on [REDACTED] in [REDACTED] capacity as President of [REDACTED] [REDACTED] sues on its own behalf and on behalf of its clients.

6. Plaintiff ACLU is a nationwide, non-profit, non-partisan organization with more than 400,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is a 501(c)(4) organization. The ACLU's activities include lobbying Congress on legislation that affects civil liberties, analyzing and educating the public about such legislation, and mobilizing ACLU members and activists to lobby their legislators to protect civil rights and civil liberties. The ACLU sues on its own behalf and on behalf of its members.

7. Plaintiff ACLUF is a 501(c)(3) organization that educates the public about civil liberties and that employs lawyers who provide legal representation free of charge in cases involving civil liberties. [REDACTED] As counsel to [REDACTED] and privy to the information contained in the [REDACTED] NSL, lawyers employed by plaintiff ACLUF are subject to Section 2709's gag [REDACTED] provision.

8. Defendant Attorney General John Ashcroft heads the United States Department of Justice (DOJ), which is the agency of the United States government responsible for enforcement of federal criminal laws and domestic intelligence investigations. Defendant Attorney General John Ashcroft has ultimate authority for supervising all of the operations and functions of the DOJ. The DOJ includes the FBI, the agency authorized to use the law challenged in this case.

43. Some of [REDACTED] clients maintain accounts with [REDACTED] specifically because of [REDACTED] commitment to security.

44. FBI agent [REDACTED] telephoned [REDACTED] President of plaintiff [REDACTED] on or about [REDACTED], to inform [REDACTED] that the FBI would be serving an NSL on [REDACTED] Agent [REDACTED] did not describe the substance of the letter.

45. Agent [REDACTED] delivered an NSL to [REDACTED] President of plaintiff [REDACTED] on or about [REDACTED]. The letter, which is dated [REDACTED] is on FBI [REDACTED] letterhead an signed by Marion E. Bowman, Senior Counsel, National Security Affairs, Office [REDACTED] of the General Counsel.

46. The letter states that [REDACTED] is "hereby directed to provide the [FBI] the names, [REDACTED] addresses, lengths of service and electronic communication transactional records. [REDACTED] [REDACTED] [REDACTED]

47. The letter includes a certification that "the information sought is relevant to an [REDACTED] authorized investigation to protect against international terrorism or clandestine intelligence [REDACTED] activities."

48. The letter states, "You are further advised that Title 18, U.S.C., Section 2709(c), [REDACTED] prohibits any officer, employee or agent of yours from disclosing to any person that the FBI has [REDACTED] sought or obtained access to information or records under these provisions."

49. The letter further states, "You are requested to provide records responsive to this [REDACTED] request personally to a representative of the [REDACTED] of the FBI. Any questions [REDACTED] you have regarding this request should be directed only to the [REDACTED] Due to [REDACTED]

security considerations, you should neither send the records through the mail nor disclose the substance of this request in any telephone conversation.” (Emphasis in original.)

50.

[REDACTED]

51. The [REDACTED] NSL does not specify any procedure by which [REDACTED] can challenge the validity of the NSL.

52. [REDACTED] asked Agent [REDACTED] whether [REDACTED] could consult a lawyer and business partners about the [REDACTED] NSL. Agent [REDACTED] stated that [REDACTED] could do so.

53. On or about [REDACTED], Agent [REDACTED] left a voicemail for [REDACTED] inquiring about the status of [REDACTED] compliance with the [REDACTED] NSL.

54. On or about [REDACTED] left a voicemail for Agent [REDACTED] requesting that any questions about the [REDACTED] NSL be directed to [REDACTED] legal counsel.

55. Section 2709(c) has prevented plaintiff [REDACTED] from disclosing information about the [REDACTED] NSL and this lawsuit to the subject of the NSL.

71. Section 2709 violates the First Amendment by categorically and permanently prohibiting any person from disclosing to any other person that the FBI has sought or obtained information with an NSL.

72. Section 2709 violates the First Amendment by authorizing the FBI to order the disclosure of constitutionally protected information without demonstrating a compelling need for the information or tailoring the demand to the need.

73. Section 2709 violates the First and Fourth Amendments by failing to specify any mechanism through which the recipient of an NSL can challenge the letter's validity.

74. Section 2709 violates the First, Fourth, and Fifth Amendments by authorizing the FBI to order the disclosure of constitutionally protected information without providing prior notice to individuals whose information is disclosed or requiring the government to justify the non-provision of notice on a case-by-case basis.

75. Section 2709 violates the Fifth Amendment because it is unconstitutionally vague.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that the Court:

1. Declare that Section 2709 violates the First, Fourth, and Fifth Amendments to the United States Constitution.
2. **Permanently enjoin defendants from seeking to enforce the NSL or from penalizing plaintiffs for failing to comply with it**
3. Permanently enjoin defendants from using Section 2709 against plaintiffs or any other person or entity.
4. Award plaintiffs fees and costs.
5. Grant such other and further relief as the Court deems just and proper.