

Proskauer Rose LLP  
Charles S. Sims (CS-0624)  
Emily Stern (ES-2386)  
1585 Broadway  
New York, New York 10024  
(212) 969-3950

Joshua L. Dratel (JD-4037)  
14 Wall Street, 28th Floor  
New York, New York 10005  
(212) 732-0707

Steven R. Shapiro (SS-9900)  
American Civil Liberties Union Foundation  
125 Broad Street  
New York, New York 10004  
(212) 549-2500  
*Counsel for Movant*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
:  
**IN RE GRAND JURY SUBPOENA SERVED** :  
**ON THE AMERICAN CIVIL LIBERTIES** :  
**UNION** :  
:  
:  
----- X

**DECLARATION OF  
ANTHONY ROMERO IN  
SUPPORT OF AMERICAN  
CIVIL LIBERTIES UNION'S  
ORDER TO SHOW CAUSE**

**ANTHONY D. ROMERO**, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am the Executive Director of the American Civil Liberties Union (the "ACLU") and submit this declaration in support of the ACLU's application for an order to show cause why the Court should not quash, under Fed. R. Crim. P. 17(c) and the First Amendment, a grand jury subpoena for documents served on the ACLU on November 20, 2006.

2. The grand jury subpoena seeks "any and all copies of a document marked 'Secret,' dated 12/20/05, with the heading 'Information Paper' that was received by the ACLU on or about October 23, 2006." See Declaration of Joshua Dratel, Esq., Ex. 1. As explained in

the accompanying declarations of Mr. Dratel and Terence Dougherty, Esq., the government has insisted from its oral request prior to issuing the subpoena, and in the subpoena itself, that the ACLU surrender or eliminate any and all copies of the document from its files, prohibiting the ACLU (or its counsel) from keeping any copy of the document (in any form, written or electronic) that the subpoena seeks to confiscate.

3. Immediate relief from the government's unjustified demand is required. As set forth in detail in the ACLU's supporting memorandum of law, the grand jury subpoena is invalid and unenforceable because, among other reasons, a grand jury subpoena is proper only in aid of the grand jury's investigative function, and may not be used for confiscatory or suppressive purposes. Moreover, as applied here, the subpoena imposes an unlawful prior restraint and, therefore, violates the ACLU's First Amendment rights.

4. The document that the subpoena seeks to confiscate concerns matters of public interest which, as explained below, relate to issues of longstanding concern to the ACLU and on which the ACLU is actively engaged in ongoing public advocacy.

5. Although the ACLU has agreed pending determination of its motion to quash not to release or otherwise disseminate the document, the ACLU seeks a prompt determination of its motion because it believes that the government is improperly using its subpoena power to suppress information and prevent the ACLU from engaging in protected First Amendment activities.

6. The ACLU's activities in support of civil liberties have increasingly focused, in the period after 9/11 and the engagement of U.S. troops in Afghanistan and Iraq, on the government's "war on terror" and its long-term detention of persons without process or judicial protection. Those activities have included, among many other things: (a) litigation under the

Freedom of Information Act (“FOIA”) seeking information about the government’s policies and practices regarding torture and the government’s compliance with the Geneva Conventions, a damages action against Donald Rumsfeld and three senior military commanders for the abuse of four Afghans and five Iraqis while in American custody, a lawsuit against the CIA challenging so-called extraordinary rendition and legal representation of government whistleblowers; (b) public education, including a searchable database on the ACLU website of government documents that now consists of more than 100,000 pages obtained through FOIA documenting the government’s torture and detention policies; and (c) public advocacy on the same subjects, including press commentary, paid advertisements, town meetings, congressional briefings, and U.N. submissions.

7. Through public education and public advocacy, the ACLU has pressed the government to comply with the Geneva Conventions, renounce torture and other forms of cruel, unusual and degrading treatment, and hold accountable senior officials who authorized or condoned such activities.

8. The ACLU has also called on Congress to demand compliance with the Geneva Conventions, exercise meaningful oversight of the Administration’s torture and detention practices, and restore the writ of habeas corpus for detainees that was unconstitutionally abridged in the recently enacted Military Commissions Act.

9. Like all useful public education and advocacy, these activities depend on the facts. Without a clear understanding of what the government is doing, it is difficult to assess

what should be done differently, and to advocate for change. Fact-gathering and fact-reporting are therefore an essential part of the ACLU's mission.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 8, 2006.

A handwritten signature in black ink, appearing to read 'Anthony D. Romero', written over a horizontal line.

**ANTHONY D. ROMERO**