

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.

**PLAINTIFFS' MOTION FOR
DISCLOSURE OF GOVERNMENT'S
EX PARTE FILING OR, IN THE
ALTERNATIVE, TO REQUIRE THE
GOVERNMENT TO PRODUCE AN
UNCLASSIFIED SUMMARY**

04 Civ. 2614 (VM)

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OR, IN THE ALTERNATIVE, TO REQUIRE THE GOVERNMENT TO PRODUCE AN
UNCLASSIFIED SUMMARY**

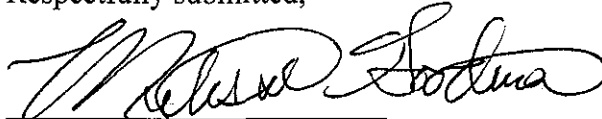
On May 27, 2009, this Court entered a scheduling order requiring the government to file "papers in support of the continuing need for nondisclosure of the National Security Letter" by June 17, and requiring plaintiffs to file a response by July 1. *Doe v. Holder*, No. 04-2614 (S.D.N.Y. May 27, 2009) (scheduling order) (dkt. no. 166). On June 17, however, the government did not file any document to which plaintiffs can actually respond. Instead, it filed with the Court (i) a certification asserting without explanation that disclosure of even the mere fact that Doe received an NSL could result in a laundry list of harms; (ii) an *ex parte* affidavit by an unspecified affiant; and (iii) a letter from the government's counsel stating without explanation that the government's *ex parte* affidavit satisfied the government's constitutional

burden. See Letter from Jeffrey Oestericher to Judge Marrero (June 17, 2009); Decl. of Jeffrey Oestericher, *Doe v. Holder*, No. 04-2614 (S.D.N.Y. June 18, 2009) (dkt. no. 167).

For the reasons stated in the accompanying Memorandum of Law, plaintiffs respectfully move this Court to require the government to disclose its *ex parte* affidavit to plaintiffs' counsel or, in the alternative, to require the government to supply plaintiffs' counsel with an unclassified summary of the affidavit that is sufficiently detailed to permit plaintiffs meaningfully to respond to the government's arguments. Plaintiffs also respectfully request that the Court stay the proceedings contemplated by the Court's May 27 order until the issues raised in the instant motion are resolved.

Plaintiffs have conferred with the defendants' counsel about the filing of this motion. Defendants consent to plaintiffs' request that the Court stay the proceedings contemplated by the Court's May 27 order until this motion is resolved. Defendants intend to oppose the remainder of plaintiffs' motion.

Respectfully submitted,



MELISSA GOODMAN (MG-7844)
JAMEEL JAFFER (JJ-4653)
LAURENCE M. SCHWARTZTOL (LS-1978)
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500

ARTHUR N. EISENBERG (AE-2012)
New York Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

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