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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

BRANDON MAYFIELD, an individual,  
MONA MAYFIELD, an individual, and  
SHANE MAYFIELD, SHARIA MAYFIELD,  
and SAMIR MAYFIELD, individuals, by and  
through their *guardian ad litem* Mona  
Mayfield,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

**CASE NO. CV-04-1427-PA**

**AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT**

Plaintiffs allege:

**INTRODUCTION**

1. The Foreign Intelligence Surveillance Act (FISA), as amended by the

Patriot Act, permits the federal government to secure search warrants authorizing covert physical searches of residences and law offices, and also permits the federal government to secure warrants authorizing electronic surveillance and wiretaps of residences and law offices. The covert physical searches, electronic surveillance and wiretaps permitted by FISA, as amended by the Patriot Act, may be authorized by the Foreign Intelligence Security Court (FISC) without the federal government even claiming that there is probable cause to believe the target of the searches or surveillance has committed a crime. The covert physical searches, electronic surveillance and wiretaps permitted by FISA, as amended by the Patriot Act, may be authorized by the FISC even if the primary purpose of the requested searches and electronic surveillance is not the collection of foreign intelligence.

2. This Amended Complaint challenges the constitutionality of those portions of FISA, as amended by the Patriot Act, that allow the FISC to authorize covert physical searches, electronic surveillance and wiretaps of residences and law offices without requiring the federal government to prove there is probable cause that the target of the requested searches and/or surveillance committed a crime, or without requiring the federal government to assert the primary purpose of the activities is to gather foreign intelligence. This Amended Complaint challenges the constitutionality of these provisions of FISA, as amended by the Patriot Act, on their face and not as applied in respect to Plaintiffs.

## **PARTIES**

3. Brandon Mayfield, his wife Mona Mayfield, and their children Shane Mayfield, Sharia Mayfield, and Samir Mayfield are United States citizens living in Oregon. Mona Mayfield is the duly appointed guardian *ad litem* of said children.

## **JURISDICTION**

4. This Court has jurisdiction of these claims pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), and 28 U.S.C. § 2201.

## **FACTUAL ALLEGATIONS**

5. On March 11, 2004, in Madrid, Spain, terrorists' bombs exploded on commuter trains, murdering 191 persons, and injuring another 1600 persons, including three U.S. citizens. International horror echoed the feelings Americans experienced after the cataclysm of September 11<sup>th</sup>. Shortly after the bombings, the Spanish National Police ("SNP") recovered fingerprints from a plastic bag containing explosive detonators. The bag was found in a Renault van located near the site of the carnage.

6. On March 13, 2004, the SNP submitted digital photographs of the latent fingerprints lifted from the bag to Interpol Madrid, which then transmitted the digital photographs to the FBI in Quantico, Virginia.

7. On or about March 17, 2004, FBI Senior Fingerprint Examiner Terry Green erroneously concluded that Mr. Mayfield's left index fingerprint matched LFP #17, the fingerprint discovered by the SNP.

8. On or about March 20, 2004, the FBI issued a formal report erroneously matching Mr. Mayfield's print and LFP #17.

9. At some point in time after the FBI's wrongful fingerprint identification, the FBI made application to the Foreign Intelligence Security Court (FISC) for an order authorizing the FBI to:

- a. Place electronic listening devices ("bugs") in the shared and intimate rooms of the Mayfield family home;
- b. Execute repeated covert searches of the Mayfield family home, occurring when the family was away from the home, which, to add insult to injury, were performed so incompetently that the FBI left traces of their searches behind, causing the Mayfield family to be frightened and believe that they had been burglarized;
- c. Execute covert searches of the Law Office of Brandon Mayfield and examine confidential client materials;
- d. Place electronic listening devices ("bugs") in the Law Office of Brandon Mayfield; and
- e. Place wiretaps on Mr. Mayfield's office and home phones.

10. The application for the FISA order before the FISC was personally approved by John Ashcroft, then the Attorney General of the United States. The

application did not assert that there was probable cause that Brandon Mayfield, or any member of his family, had committed a crime. The application did not assert that the primary purpose of the requested covert physical searches and requested electronic surveillance was the collection of foreign intelligence. Instead, pursuant to the Patriot Act, the application asserted only that “a significant purpose” of the requested covert physical searches and requested electronic surveillance was the collection of foreign intelligence. The applications were approved by the FISC, acting in accordance with FISA as amended by the Patriot Act.

11. Pursuant to the orders of the FISC, the FBI performed covert physical searches of the Mayfield home and the law office of Brandon Mayfield.

12. Pursuant to orders of the FISC, the FBI also conducted electronic surveillance targeting Mr. Mayfield at the Mayfield home and at Mr. Mayfield’s law office.

13. FBI agents took approximately 335 photographs inside the Mayfield residence, and additional photographs were also taken inside Mr. Mayfield’s law office, by FBI agents during the FISC-authorized searches.

14. It is unknown to Mr. Mayfield what, exactly, the U.S. government learned from Spain between March 17<sup>th</sup> and April 2<sup>nd</sup>. On April 2<sup>nd</sup> the FBI sent Mr. Mayfield’s fingerprints to Spain. By that date it is believed that the U.S. government had already been advised by the Spanish government that Moroccan

immigrants were suspects in the Madrid bombing and had been taken into custody, and that the Spanish government was not aware of any information connecting the Moroccans with Mr. Mayfield or anyone in the U.S.

15. The SNP examined the FBI's report, and Mr. Mayfield's fingerprints, and concluded that there were dissimilarities in the comparison of the two prints for which there was no explanation. On April 13<sup>th</sup> the SNP provided a written report to the FBI explaining that they had compared LFP #17 to Mr. Mayfield's fingerprints, and stated their conclusion *that there was no match*.

16. Despite having been told by the SNP that LFP #17 and Mr. Mayfield's print were not a match, knowing what was at stake and in the furtherance of their own personal and institutional interests, the FBI personnel continued to insist that their match of the prints was correct.

17. On April 21, 2004, the FBI sent one or more agents to Madrid, Spain, to meet with their Spanish counterparts. Their intent and purpose was to exert whatever influence and pressure necessary to convince the SNP of the correctness of the FBI match. Spanish sources have publicly stated that still the Spanish authorities who met with the FBI agents on April 21<sup>st</sup> "refused to validate" the FBI's conclusion that LFP #17 and the known print of Mr. Mayfield were a match.

18. The FBI remained undaunted. Even though the FBI's claim that LFP # 17 matched Mr. Mayfield's left index finger was directly and competently

challenged by the SNP, the FBI sought to bolster its conclusion by the collection of hoped for corroboration. The FBI continued to use the powers and secrecy of FISA, as amended by the Patriot Act, to perform covert physical searches of Brandon Mayfield's home and law office, and to conduct electronic surveillance, including wiretaps of Mr. Mayfield's home and law office. However, the government's intensive surveillance and investigation of Mr. Mayfield uncovered no criminal links whatsoever with Spain or the Madrid bombings.

19. On May 6, 2006, Brandon Mayfield was arrested. His family was not told where he was being held. He was told, and his family was told, that he was being held as a primary suspect on offenses punishable by death.

20. On May 19<sup>th</sup>, the SNP advised the FBI, and on May 20<sup>th</sup> news reports revealed, that Spain had matched the Madrid fingerprint with an Algerian, Mr. Ouhane Daoud. The FBI now admits that its fingerprint identification of Brandon Mayfield was an error, and, incredibly, the FBI now states that LFP # 17 is "of no value for identification purposes."

21. This lawsuit seeks to affirm that not even a "War on Terror" allows the federal government to deprive U.S. citizens of their constitutionally protected rights to liberty and to enjoy the privacy and security of their homes and offices.

### **CLAIM FOR DECLARATORY RELIEF**

22. Plaintiffs reallege and incorporate herein paragraphs 1 – 23, above.

23. Pursuant to FISA, as amended by the Patriot Act, Plaintiffs were subjected to covert surveillance and searches of their family home, law office, vehicles, and communications. Pursuant to FISA, as amended by the Patriot Act, the information collected by said covert surveillance and searches was maintained in government files, and derivative FISA materials were distributed to certain government agencies and departments outside the DOJ and derivative materials remain in government files.

24. Plaintiffs, through their lawyers, demanded that Defendant reveal to Plaintiffs the FISA applications, FISA orders and related documents, and further demanded Defendant remove from government files derivative FISA materials relating to Plaintiffs. Plaintiffs have insisted that FISA, as amended by the Patriot Act, is unconstitutional in the particulars set forth herein, and that therefore Defendant may not continue to retain derivative materials in government files. Defendant refuses to reveal to Plaintiffs the FISA applications, FISA orders and related documents pertaining to Plaintiffs. Defendant denies that FISA, as amended by the Patriot Act, is unconstitutional.

25. Defendant utilized the challenged provisions of FISA, as amended by the Patriot Act, to secretly collect, disseminate and retain information and communications seized from Plaintiffs' home and law office. Because Defendant refuses to identify and destroy all derivative materials in government files as a



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result of the physical searches and electronic surveillance performed by the government, because Plaintiffs fear the future uses of the derivative materials in government files, because Plaintiffs fear future uses of FISA, as amended by the Patriot Act, and because Plaintiffs have no other plain, speedy or adequate remedy at law, Plaintiffs seek a declaratory judgment that 50 U.S.C. §§ 1804 and 1823, as amended by the Patriot Act, violate the Fourth Amendment of the United States Constitution, on their face, because they:

- a. permit the federal government to perform covert physical searches and electronic surveillance and wiretaps of the home, office and vehicles of a person without first requiring the government to demonstrate to a court the existence of probable cause that the person has committed a crime;
- b. permit the federal government to perform covert physical searches and electronic surveillance and wiretaps of a person without first requiring the government to demonstrate to a court that the primary purpose of the searches and surveillance is to obtain foreign intelligence information; and
- c. permit the federal government to covertly collect, disseminate and retain information collected through covert physical searches and electronic surveillance without first requiring the government to

demonstrate to a court the existence of probable cause that the person who is the target of physical searches and electronic surveillance has committed a crime, or, alternatively, that the primary purpose of the searches and surveillance are to obtain foreign intelligence information.

WHEREFORE, Plaintiffs pray for issuance of a declaratory judgment as set forth above.

Plaintiffs also seek their costs and disbursements necessarily incurred herein.

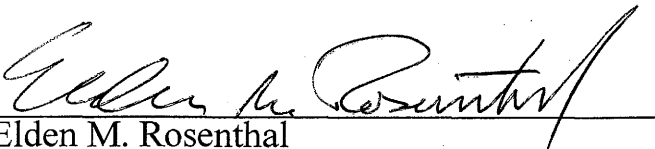
DATED this 27th day of November, 2006.

THE SPENCE LAW FIRM LLC

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