

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

AMERICAN CIVIL LIBERTIES UNION;
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; NEW YORK CIVIL
LIBERTIES UNION; and NEW YORK CIVIL
LIBERTIES UNION FOUNDATION,

Plaintiffs,

- against -

JAMES CLAPPER, in his official capacity as
Director of National Intelligence; KEITH B.
ALEXANDER, in his official capacity as
Director of the National Security Agency and
Chief of the Central Security Service;
CHARLES T. HAGEL, in his official capacity as
Secretary of Defense; ERIC H. HOLDER, in his
official capacity as Attorney General of the
United States; and ROBERT S. MUELLER III,
in his official capacity as Director of the Federal
Bureau of Investigation,

Defendants.

ECF CASE

Index No. 13 Civ. 3994 (WBP)

**MOTION OF NON-PARTY PEN AMERICAN CENTER FOR LEAVE
TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS**

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Attorneys for Amicus Curiae PEN American Center

Nonparty PEN American Center (“PEN”) hereby moves the Court for leave to file the accompanying brief as *amicus curiae* in the above-captioned case, in support of Plaintiffs. Both Plaintiffs and Defendants have consented to the filing of this brief.

PEN is a non-profit association of writers that includes poets, playwrights, essayists, novelists, editors, screenwriters, journalists, literary agents and translators. PEN has approximately 3,700 members and is affiliated with PEN International, the global writers’ organization with 144 centers in more than 100 countries in Europe, Asia, Africa, Australia, and the Americas. PEN International was founded in 1921, in the aftermath of the first World War, by leading European and American writers who believed that international exchange of ideas was the only way to prevent disastrous conflicts born of isolation and extreme nationalism. Today, PEN works along with the other chapters of PEN International to advance literature, protect freedom of expression, and advocate for writers all over the world who are persecuted because of their work.

PEN submits the accompanying brief to highlight for the Court the ways in which the government’s comprehensive collection of telephone call information particularly harms writers by endangering the privacy that is necessary for the free exploration and exchange of ideas and the freedom of expression the Constitution protects.

Amicus curiae submissions are generally accepted if “they are of aid to the court and offer insights not available from the parties.” *Automobile Club of New York, Inc. v. Port Authority of New York and New Jersey*, No. 11 Civ. 6746, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011) (citing *United States v. El-Gabrowni*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994)). See also *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.) (“An amicus brief should normally be allowed . . . when the amicus has unique

information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”). As then-Judge Alito explained,

[s]ome friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.

Neonatology Assocs., P.A. v. C.I.R., 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.).

PEN aims to assist in all these ways. The parties will naturally focus their arguments on the effects the collection of phone records by the National Security Agency (“NSA”) has on the plaintiffs and their communications with their clients and potential clients. As the accompanying brief shows, PEN is particularly qualified to provide the Court with perspectives on the broader impact such government surveillance has on writers and on First Amendment interests, drawing on the experience and research of its members and PEN’s own research and advocacy. Throughout history, writers in this country have been susceptible to abusive government surveillance. This has been especially true for writers expressing dissenting points of view, but writers with mainstream views have been the victims of government surveillance and harassment, as well.

PEN and its members are also acutely aware of the inhibiting effect that the NSA’s routine, comprehensive surveillance can have, not only on individual writers but on the evolution of thought and ideas generally, which depend crucially on privacy – the freedom to make connections, communicate with one another, and experiment and create that the Constitution has long protected. The perspectives offered by PEN’s members in the proposed brief thus provide a view of the issues and the stakes in this case beyond what the parties are likely to provide in their submissions.

For these reasons, PEN respectfully requests that the Court grant this motion for leave to file the accompanying brief.

Dated: New York, New York
September 4, 2013

Respectfully submitted,

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