



For Immediate Release

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**WLF OPPOSES ACLU CHALLENGE TO
NSA SURVEILLANCE PROGRAM
(*ACLU v. National Security Agency; CCR v. Bush*)**

The Washington Legal Foundation (WLF) filed a brief yesterday in the United States District Court for the Eastern District of Michigan opposing a lawsuit filed by the American Civil Liberties Union (ACLU) challenging the legality of electronic surveillance by the National Security Agency (NSA) without a court order of certain international communications where one of the parties to the communication is a suspected al Qaeda agent or affiliate. WLF is planning to file a similar brief later this week in New York federal court in a related case filed by the Center for Constitutional Rights (CCR).

In *ACLU v. NSA* and *CCR v. Bush*, the activist groups claim that the recently revealed NSA surveillance program, where international calls and emails are monitored, violates the Foreign Intelligence Surveillance Act of 1978 (FISA), which requires approval by a special FISA court confirming that there is probable cause to believe that the person targeted for electronic surveillance is an agent of a foreign power. However, after the terrorist attacks on the United States on September 11, 2001, the President authorized the collection of international communications between a person in the United States and a person overseas where there is reasonable belief that one of the persons to the call is an al Qaeda agent or affiliated with al Qaeda or other terrorist organization.

The ACLU and CCR claim the NSA program violates FISA, and thus, the separation of powers, by violating congressional commands on surveillance procedures. They also argue that the program violates their speech and privacy rights under the First and Fourth Amendments. In its brief, WLF forcefully argued it is FISA that violates the separation of powers to the extent it impairs the President's ability to carry out his constitutional responsibilities to defend the country from further attack and to collect foreign intelligence. Asserting military and state secrets privilege, the Department of Justice filed papers last week stating that the courts cannot reach the merits of the case.

WLF's brief was drafted with the *pro bono* assistance of Bryan Cunningham of Morgan & Cunningham LLC in Denver, CO, where he specializes in cybersecurity and related issues. Prior to entering private practice, Mr. Cunningham was deputy legal adviser to the National Security Council on cybersecurity and homeland security matters.

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