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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 ELECTRONIC FRONTIER FOUNDATION,) NO. 08-1023 EDL
16)
16 Plaintiff,) **DECLARATION OF MARCIA**
17) **HOFMANN IN SUPPORT OF**
17 v.) **PLAINTIFF'S MOTION FOR A**
18) **PRELIMINARY INJUNCTION**
18 OFFICE OF THE DIRECTOR OF NATIONAL)
19 INTELLIGENCE)
20 and)
21 DEPARTMENT OF JUSTICE,)
22)
22 Defendants.)
23 _____)

24 1. I am an attorney of record for the plaintiff in this matter and a member in good
25 standing of the California State Bar, and am admitted to practice before this Court. I have personal
26 knowledge of the matters stated in this declaration. If called upon to do so, I am competent to
27 testify to all matters set forth herein.
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1 2. Plaintiff Electronic Frontier Foundation (“EFF”) is a non-for-profit corporation
2 established under the laws of California with its principal place of business in San Francisco.

3 3. Attached hereto as Exhibit A is a true and correct copy of the following newspaper
4 article: James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y.
5 TIMES, Dec. 16, 2005, available at <http://www.nytimes.com/2005/12/16/politics/16program.html>.

6 4. Attached hereto as Exhibit B is a true and correct copy of the following webpage:
7 President’s Radio Address, Dec. 17, 2005, available at [http://www.whitehouse.gov/news/releases/
8 2005/12/20051217.html](http://www.whitehouse.gov/news/releases/2005/12/20051217.html).

9 5. Attached hereto as Exhibit C is a true and correct copy of the following newspaper
10 article: Eric Lictblau, *Spy Agency Mined Vast Data Trove, Officials Report*, N.Y. TIMES, Dec. 24,
11 2005, available at <http://www.nytimes.com/2005/12/24/politics/24spy.html>.

12 6. Attached hereto as Exhibit D is a true and correct copy of the following newspaper
13 article: Leslie Cauley and John Diamond, *Telecoms Let NSA Spy on Calls*, USA TODAY, Feb. 6,
14 2006, available at http://www.usatoday.com/news/washington/2006-02-05-nsa-telecoms_x.htm.

15 7. Attached hereto as Exhibit E is a true and correct copy of the following newspaper
16 article: James Risen, *Bush Signs Law to Widen Reach for Wiretapping*, N.Y. TIMES, Aug. 5, 2007,
17 available at <http://www.nytimes.com/2007/08/06/washington/06nsa.html>.

18 8. Attached hereto as Exhibit F is a true and correct copy of the following presidential
19 signing statement: *President Bush Commends Congress on Passage of Intelligence Legislation*,
20 Aug. 6, 2007, available at <http://www.whitehouse.gov/news/releases/2007/08/20070805.html>.

21 9. Attached hereto as Exhibit G is a true and correct copy of the following newspaper
22 article: Chris Roberts, *Transcript: Debate on the Foreign Intelligence Surveillance Act*, EL PASO
23 TIMES, Aug. 22, 2007 available at http://www.elpasotimes.com/news/ci_6685679.

24 10. Attached hereto as Exhibit H is a true and correct copy of the following magazine
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1 article: Mark Hosenball and Michael Isikoff, *Case Dismissed?: The Secret Lobbying Campaign*
2 *Your Phone Company Doesn't Want You to Know About*, NEWSWEEK, updated Sept. 26, 2007,
3 available at <http://www.newsweek.com/id/41142>.

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5 11. Attached hereto as Exhibit I is a true and correct copy of the following news article:
6 Tim Starks, *House Allows FISA Law to Expire*, CONGRESSIONAL QUARTERLY, Feb. 17, 2008,
7 available at <http://www.cqpolitics.com/wmspage.cfm?docID=weeklyreport-000002672840> .

8 12. Attached hereto as Exhibit J is a true and correct copy of the following transcript:
9 Press Conference of the President, Feb. 28, 2008, available at
10 <http://www.whitehouse.gov/news/releases/2008/02/20080228-2.html>.

11 13. In letters sent by facsimile on December 21, 2007, to the Office of the Director of
12 National Intelligence (“ODNI”) and the Department of Justice (“DOJ”) Office of the Attorney
13 General, Office of Legislative Affairs, Office of Legal Policy, Office of Legal Counsel, and
14 National Security Division, I requested all agency records from September 1, 2007 to December
15 21, 2007 concerning “briefings, discussions, or other exchanges” that agency officials
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17 have had with 1) members of the Senate or House of Representatives and 2)
18 representatives or agents of telecommunications companies concerning
19 amendments to FISA, including any discussion of immunizing
20 telecommunications companies or holding them otherwise unaccountable for their
21 role in government surveillance activities. This request includes, but is not
22 limited to, all email, appointment calendars, telephone message slips, or other
23 records indicating that such briefings, discussions, or other exchanges took place.¹

24 ¹ Each request contained the following footnote:

25 The phrase “representatives or agents of telecommunications companies” is
26 intended to include lobbyists and lawyers acting on behalf of such companies.
27 According to *Newsweek*, these individuals may include, but are not limited to,
28 “powerhouse Republican lobbyists Charlie Black and Wayne Berman (who
represent AT&T and Verizon, respectively), former GOP senator and U.S.
ambassador to Germany Dan Coats (a lawyer at King & Spaulding who is
representing Sprint), former Democratic Party strategist and one-time assistant
secretary of State Tom Donilon (who represents Verizon), former deputy attorney
general Jamie Gorelick (whose law firm also represents Verizon) and Brad
Berenson, a former assistant White House counsel under President George W.

1 A true and correct copy of these letters are attached hereto as Exhibits K, L, M, and N.

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3 14. In a letter dated December 28, 2007, the DOJ Office of Information and Privacy
4 acknowledged that it had received EFF's December 21 FOIA requests to the Office of the Attorney
5 General, Office of Legislative Affairs, and Office of Legal Policy, and informed EFF that its
6 requests for expedited processing had been granted. A true and correct copy of this letter is
7 attached hereto as Exhibit O.

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9 15. In a letter dated January 7, 2008, ODNI acknowledged that it had received EFF's
10 December 21 FOIA request and informed EFF that its request for expedited processing had been
11 granted. A true and correct copy of this letter is attached hereto as Exhibit P.

12 16. In a letter dated January 9, 2008, the DOJ Office of Legal Counsel acknowledged
13 that it had received EFF's December 21 FOIA request and informed EFF that its request for
14 expedited processing had been granted. A true and correct copy of this letter is attached hereto as
15 Exhibit Q.

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17 17. In a letter dated December 27, 2007, the DOJ National Security Division
18 acknowledged receipt of EFF's December 21 FOIA request. A true and correct copy of this letter is
19 attached hereto as Exhibit R.

20 18. In a letter dated January 29, 2008 informed EFF that its request for expedited
21 processing had been granted. A true and correct copy of this letter is attached hereto as Exhibit S.

22 19. Notwithstanding ODNI and DOJ's purported decisions to grant expedited
23 processing for EFF's December 21 FOIA requests, the agencies have neither completed the
24 processing of the requests nor informed EFF of an anticipated date for the completion of such
25 processing.
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Bush who now represents AT&T." Mark Hosenball and Michael Isikoff, *Case Dismissed?*, NEWSWEEK, updated Sept. 26, 2007.

1 20. Unless ODNI and DOJ are ordered to process EFF's FOIA requests immediately,
2 EFF's right to expedition under the FOIA will be irretrievably lost, resulting in irreparable injury to
3 EFF.

4 21. Any further delay in the processing of EFF's December 21 FOIA requests will
5 irreparably harm EFF's ability, and that of the public, to obtain in a timely fashion information
6 vital to the current and ongoing debate surrounding whether, and how, foreign intelligence
7 surveillance law should be amended, especially with regard to providing legal immunity to
8 telecommunications carriers for their past participation in unlawful government surveillance
9 operations.

10 22. Without expedited access to the information to which it is legally entitled, EFF's
11 ability to engage in an urgent and current public debate will be irretrievably lost.

12 23. On February 21, 27 and 28, 2008, I contacted counsel for Defendants ODNI and
13 DOJ to explore the possibility of negotiating a processing schedule for EFF's FOIA requests to
14 eliminate the need for further action in this case. I told opposing counsel that EFF planned to seek
15 preliminary injunctive relief if the parties could not agree upon a mutually acceptable date by
16 which to process EFF's requests. However, Defendants have been unwilling to commit to process
17 the requests by a specific date.

18 24. Attached hereto as Exhibit T is a true and correct copy of *Electronic Frontier*
19 *Foundation v. Dep't of Justice*, No. 07-0656, slip op. (D.D.C. June 16, 2007).

20 25. Attached hereto as Exhibit U is a true and correct copy of ODNI's most recent
21 annual FOIA processing statistics: U.S. Office of the Director of National Intelligence, Freedom of
22 Information Act Report for Fiscal Year 2007, Compliance with Time Limits/Status of Pending
23 Requests, available at http://www.odni.gov/Annual_Report_Final.pdf.

24 26. Attached hereto as Exhibit V is a true and correct copy of DOJ's most recent annual
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FOIA processing statistics: U.S. Department of Justice, Freedom of Information Act Report for Fiscal Year 2007, Compliance with Time Limits/Status of Pending Requests, available at http://www.usdoj.gov/oip/annual_report/2007/07foiapg7.pdf.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed February 29, 2008 in San Francisco, California.

/s/ Marcia Hofmann
Marcia Hofmann