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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE GRAND JURY SUBPOENA SERVED : **DECLARATION OF**
ON THE AMERICAN CIVIL LIBERTIES : **TERENCE DOUGHERTY IN**
UNION : **SUPPORT OF AMERICAN**
: **CIVIL LIBERTIES UNION'S**
: **ORDER TO SHOW CAUSE**
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TERENCE DOUGHERTY, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am the Senior Corporate Counsel of the American Civil Liberties Union (“ACLU”), whose principal offices are in New York, New York. I serve as ACLU’s in-house counsel.

2. In the late afternoon on Friday, November 17, 2006, Assistant United States Attorney Jennifer Rodgers left a message on my voicemail, asking me to return her call, but leaving no information as to the nature of her call. Later that evening Ms. Rodgers left another message on my voicemail, asking me to return her call and explaining that ACLU was in

possession of a classified document sent to the ACLU by email on October 23, 2006, that the government wanted the ACLU to return.

3. On Monday, November 20, 2006, I returned Ms. Rodgers' call. Ms. Rodgers again explained that a document had been delivered to the ACLU by email on October 23. It was my impression that Ms. Rodgers already had, and knew the identity of the recipient of, the document. Ms. Rodgers stated that it was illegal for the ACLU to possess or disclose the document and insisted that the ACLU return to the government any and all copies it had of the document, together with information as to whether the document had been disseminated by the ACLU and assurances, to be negotiated and discussed, that all copies of the document were in fact returned or destroyed (leaving none extant at the ACLU). I asked Ms. Rodgers to explain the authority under which the government was insisting that ACLU return the document, to which Ms. Rodgers responded that it was pursuant to 18 U.S.C. §§ 793 and 798. Ms. Rodgers indicated that she was not familiar with the ACLU's computer systems and was not technically sophisticated, and so we would need to discuss how the ACLU could give the government a requisite level of assurance that all electronic copies of the document were returned to the government or destroyed and none remained extant on the ACLU computer system. I informed Ms. Rodgers that before I could respond to her requests, I needed to discuss her requests with my colleagues. Ms. Rodgers requested that I return her call by the end of that day to give her an update as to how ACLU planned to proceed.

4. Following my conversation with Ms. Rodgers, I looked into the status of the document she requested. My investigation revealed that the ACLU had a single paper copy of the document in its offices and an electronic copy that had been saved to its electronic database.

Based on my investigation, it is my belief that no other copies had been made and none have been made since (save for copies automatically made by the system's back-up function).

5. Soon after my conversation with Ms. Rodgers, I discussed Ms. Rodgers' request with Anthony Romero, the Executive Director of the ACLU. Mr. Romero promptly secured the one extant paper copy of the document and directed that the electronic copy be isolated so that it was inaccessible to anyone at the ACLU other than Mr. Romero and certain limited individuals in the ACLU Information Technology Department who generally have access to private documents stored on the ACLU computer system.

6. Later on that day, the ACLU retained Joshua L. Dratel to serve as outside counsel with respect to this matter. Mr. Dratel returned Ms. Rodgers' call on my behalf. Mr. Dratel was directed to explain to Ms. Rodgers that ACLU would not surrender the document voluntarily, but would do so only pursuant to legal process. Thereafter, Mr. Dratel received a subpoena for the ACLU. A copy of the subpoena is attached to the Dratel Decl. as Exhibit 1.

7. In addition to the document referred to by Ms. Rodgers, the subpoena calls for "any and all copies of any other documents marked 'Secret' that were received in October or November from the same source as provided the 12/20/05 document reference above." No such other documents are believed to exist.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 10, 2006.


TERENCE DOUGHERTY