

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS MERRILL,

Plaintiff,

v.

LORETTA LYNCH, in her official capacity  
as Attorney General of the United States, and  
JAMES B. COMEY, in his official capacity  
as Director of the Federal Bureau of  
Investigation,

Defendants.

14 CIV. 9763 (VM)

**PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS**

Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and Rule 54, Plaintiff Nicholas Merrill respectfully moves the Court for an award of attorneys' fees in the amount of \$82,689, and costs in the amount of \$350. Plaintiff's motion is supported by the accompanying Memorandum of Law, the Second Declaration of Nicholas Merrill, the Second Declaration of Jonathan Manes and accompanying exhibits, and all of the prior proceedings in this case.

Respectfully submitted,

/s/Jonathan Manes

Jonathan Manes, supervising attorney  
David A. Schulz, supervising attorney  
MEDIA FREEDOM AND INFORMATION  
ACCESS CLINIC, YALE LAW SCHOOL  
P.O. Box. 208215  
New Haven, CT 06520  
Tel: (203) 432-9387  
Fax: (203) 432-3034  
jonathan.manes@yale.edu

Dated: December 16, 2015  
New Haven, CT

*Attorneys for Plaintiff Nicholas Merrill*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS MERRILL,

Plaintiff,

v.

14 CIV. 9763 (VM)

LORETTA LYNCH, in her official capacity  
as Attorney General of the United States, and  
JAMES B. COMEY, in his official capacity  
as Director of the Federal Bureau of  
Investigation,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES AND COSTS**

Jonathan Manes, supervising attorney  
David A. Schulz, supervising attorney  
Media Freedom and Information Access Clinic  
YALE LAW SCHOOL  
P.O. Box. 208215  
New Haven, CT 06520  
Tel: (203) 432-9387  
Fax: (203) 432-3034  
jonathan.manes@yale.edu

*Attorneys for Plaintiff Nicholas Merrill*

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT .....1

ARGUMENT .....2

I. PLAINTIFF IS ENTITLED TO ATTORNEYS’ FEES UNDER THE EQUAL  
ACCESS TO JUSTICE ACT.....2

    A. Plaintiff Is the Prevailing Party Under EAJA..... 2

    B. The Government’s Positions Were Not Substantially Justified..... 4

II. THE FEES SOUGHT ARE REASONABLE.....8

    A. The Number of Hours Claimed Is Reasonable. .... 9

    B. The Rates Claimed Are Reasonable. .... 10

III. PLAINTIFF IS ENTITLED TO AN AWARD OF COSTS.....15

CONCLUSION.....16

## TABLE OF AUTHORITIES

### Cases

<i>ACLU v. Dep't of Defense</i> , No. 09-cv-8071 (S.D.N.Y. filed Sept. 22, 2009) .....	12
<i>ACLU v. Dep't of Justice</i> , No. 10-cv-436 (D.D.C. filed Mar. 16, 2010) .....	12
<i>ACLU v. NSA</i> , No. 13-cv-9198 (S.D.N.Y. filed Dec. 30, 2013) .....	12
<i>Adorno v. Port Auth. of N.Y. &amp; N.J.</i> , 685 F. Supp. 2d 507 (S.D.N.Y. 2010) .....	14
<i>Aulaqi v. Obama</i> , 727 F. Supp. 2d 1 (D.D.C. 2010) .....	13
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984) .....	8
<i>Buckhannon Bd. &amp; Care Home, Inc. v. W. Va. Dep't of Health &amp; Human Res.</i> , 532 U.S. 598 (2001) .....	3
<i>Comm., I.N.S. v. Jean</i> , 496 U.S. 154 (1990) .....	10
<i>Doe v. Gonzales</i> , 386 F. Supp. 2d 66 (D. Conn. 2005) .....	11
<i>Doe v. Holder</i> , 703 F. Supp. 2d 313 (S.D.N.Y. 2010) .....	5
<i>Ericksson v. Comm'r of Soc. Sec.</i> , 557 F.3d 79 (2d Cir. 2009) .....	4
<i>Froio v. McDonald</i> , No. 12-3483, 2015 WL 3439252 (U.S. Ct. App. Vet. Cl. May 29, 2015) .....	15
<i>George v. Rehiel</i> , No. 10-cv-586 (E.D. Pa. filed Feb. 10, 2010) .....	13
<i>Gierlinger v. Gleason</i> , 160 F.3d 858 (2d Cir. 1998) .....	14
<i>Green v. Bowen</i> , 877 F.2d 204 (2d Cir. 1989) .....	1

*Healey v. Leavitt*,  
485 F.3d 63 (2d Cir. 2007) ..... 4

*Hensley v. Eckerhart*,  
461 U.S. 424 (1983)..... 8, 9

*In re National Security Letter*,  
No. 11-cv-2173 (N.D. Cal.) ..... 11

*In re National Security Letter*,  
No. 11-cv-2667 (N.D. Cal.) ..... 11

*In re National Security Letter*,  
No. 13-cv-1165 (N.D. Cal.) ..... 11

*In re National Security Letter*,  
No. 13-mc-80089 (N.D. Cal.) ..... 11

*In re Orders Interpreting Section 215 of the PATRIOT Act*,  
No. Misc 13-02, 2013 WL 5460064 (Foreign Intel. Surv. Ct. 2013) ..... 12

*Internet Archive v. Mukasey*,  
No. 07-cv-6346 (N.D. Cal. filed Dec. 14, 2007) ..... 11

*Jalatzai v. Gates*,  
No. 10-cv-319 (D.D.C. filed Feb. 26, 2010)..... 13

*Kerin v. U.S. Postal Serv.*,  
218 F.3d 185 (2d Cir. 2000) ..... 3

*Laffey v. Northwest Airlines, Inc.*,  
572 F. Supp. 354 (D.D.C. 1983)..... 15

*Luciano v. Olsten Corp.*,  
109 F.3d 111 (2d Cir. 1997) ..... 9, 15

*LV v. N.Y. City Dep 't of Educ.*,  
700 F. Supp. 2d 510 (S.D.N.Y. 2010) ..... 14

*M.C. ex rel. E.C. v. Dep't of Educ.*,  
No. 12-cv-9281, 2013 WL 2403485 (S.D.N.Y. June 4, 2013)..... 9, 15

*Missouri v. Jenkins*,  
491 U.S. 274 (1989)..... 9

*Moon v. Gab Kwon*,  
No. 99-cv-11810, 2002 WL 31512816 (S.D.N.Y. Nov. 8, 2002) ..... 9

*Pierce v. Underwood*,  
487 U.S. 552 (1988)..... 4, 10

*Pres. Coal. of Erie County v. Fed. Transit Admin.*,  
356 F.3d 444 (2d Cir. 2004) ..... 3

*Qatanani v. Dep’t of Homeland Security*,  
No. 12-cv-5379 (D.N.J. filed Aug. 24, 2012)..... 12

*Qatanani v. Dep’t of Justice*,  
No. 12-cv-4042 (D.N.J. filed June 29, 2012) ..... 12

*Ramos v. Flowers*,  
56 A.3d 869 (N.J. App. Div. 2012)..... 13

*Salahi v. Obama*,  
710 F. Supp. 2d 1 (D.D.C. 2010)..... 13

*Vacchio v. Ashcroft*,  
404 F.3d 663 (2d Cir. 2005) ..... 4

*Vilkhu v. City of New York*,  
No. 06-cv-2095, 2009 WL 1851019 (S.D.N.Y. June 26, 2009)..... 14

**Statutes**

18 U.S.C. § 3511..... 3

28 U.S.C. § 1920..... 15

28 U.S.C. § 2412(a)(1)..... 15

28 U.S.C. § 2412(d)(1)(A)..... 2

28 U.S.C. § 2412(d)(1)(B) ..... 2

28 U.S.C. § 2412(d)(2)(A)..... 10

28 U.S.C. § 2412(d)(2)(B) ..... 2

28 U.S.C. § 2412(d)(2)(D)..... 4

**PRELIMINARY STATEMENT**

Plaintiff brought this suit in order to obtain a court order vacating in full the gag order that had, since 2004, prevented him from speaking freely about the National Security Letter that the FBI served on him in that year. This Court has awarded him a complete victory. Many of the positions that the government defended in this case were “extreme” and “overly broad,” as this Court recognized. The government did not appeal this Court’s decision.

Plaintiff now seeks an award of attorneys’ fees and costs under the Equal Access to Justice Act (“EAJA”) totaling \$83,089. This award, which reflects the reasonable value of the work performed by Plaintiff’s counsel, is warranted under EAJA because Plaintiff is the “prevailing party” and the government’s position was “substantially unjustified.” An award of fees is also necessary in order to vindicate the broader purpose of the EAJA fee-shifting provision—that is, to “decrease the chance that certain individuals . . . may be deterred from seeking review of, or defending against unreasonable governmental action because of the expense involved in securing the vindication of their rights.” *Green v. Bowen*, 877 F.2d 204, 206 (2d Cir.1989) (internal quotation and citation omitted).

Hundreds of thousands of NSLs have been issued since the 2001 PATRIOT Act vastly expanded their domestic use, and nearly all of those NSLs were accompanied by an indefinite nondisclosure order. As a result, countless individuals and organizations remain subject to restrictions on their speech that have been in place for as many as 14 years and counting. These private citizens are prevented from recounting their experience of being issued an NSL, and are forbidden from telling the public what they know firsthand about how the FBI has used this controversial surveillance tool. Yet almost no NSL recipients can or will bear the legal expense of challenging these gag orders. In order to mount a legal challenge to a National Security Letter

nondisclosure order, an NSL recipient must obtain highly specialized legal assistance that is both uncommon and costly. *Pro bono* representation in such cases is extraordinarily scarce.

Therefore, in the absence of the prospect of an attorneys' fee award, there is essentially no chance that individuals who remain subject to nondisclosure orders will seek initiate judicial review, even if the gag orders binding them are now patently unjustifiable. Finding that a fee award is justified in this case would thus serve the core purpose of EAJA by incentivizing lawyers to represent NSL recipients with meritorious claims, and by permitting NSL recipients to challenge overbroad nondisclosure orders, like the one here, that persist long after any reasonable justification has lapsed.

## **ARGUMENT**

### **I. PLAINTIFF IS ENTITLED TO ATTORNEYS' FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT.**

Under the EAJA, a "prevailing party" is entitled to attorneys' fees in a civil action brought against the United States or its officials unless the government can establish that its position "was substantially justified." 28 U.S.C. § 2412(d)(1)(A). Plaintiff Nicholas Merrill is entitled to fees under EAJA because he was the prevailing party in this case and neither the government's actions nor its litigation positions were substantially justified.<sup>1</sup>

#### **A. Plaintiff Is the Prevailing Party Under EAJA.**

A party "prevail[s] . . . whenever there is a 'court ordered change in the legal relationship between the plaintiff and the defendant' or a 'material alteration of the legal relationship of the

---

<sup>1</sup> Plaintiff meets the other eligibility requirements for fees under EAJA. This motion is timely filed within 30 days of final judgment. The Judgment in this case became final on November 16, 2015, the date that the government's time to appeal expired. *See* ECF No. 45; 28 U.S.C. § 2412(d)(1)(B). Plaintiff meets EAJA's financial requirements. *See* Second Declaration of Nicholas Merrill ("Second Merrill Decl.") ¶ 1; 28 U.S.C. § 2412(d)(2)(B). Finally, no "special circumstances" make an award of fees unjust here. *See* 28 U.S.C. § 2412(d)(1)(A).



parties.” *Pres. Coal. of Erie County v. Fed. Transit Admin.*, 356 F.3d 444, 452 (2d Cir. 2004) (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604 (2001)). This is not an onerous standard. A party “prevail[s]” when it has “succeeded on any significant issue in litigation which achieved some of the benefit the part[y] sought in bringing suit.” *Kerin v. U.S. Postal Serv.*, 218 F.3d 185, 189 n.1 (2d Cir. 2000).

Plaintiff here is clearly the prevailing party. Plaintiff filed this lawsuit for one reason: to obtain a court order lifting the remaining portions of the nondisclosure requirement imposed upon him by a National Security Letter issued by the FBI in 2004. *See* Decision and Order (“Op.”) 27, 34, ECF No. 47; *compare* Complaint 13-14, ECF No. 1. This Court’s Decision and Order on Plaintiff’s motion for summary judgment awarded Plaintiff all of the relief he sought. In particular, the Court held that the nondisclosure order could not be justified under the NSL statute, 18 U.S.C. § 3511(b)(3), because there was no “good reason” to expect that disclosure would risk any of the enumerated harms. Op. 27, 34. In ruling on this basis, the Court fully endorsed one of the three theories that Plaintiff advanced in this litigation for why the nondisclosure requirement was unlawful. *See id.*; *compare* Complaint 11-12 (“Second Cause of Action: Nondisclosure Order Is Not Justified Under 18 U.S.C. § 3511”).<sup>2</sup> Because Plaintiff has been granted complete relief as a result of this Court’s decision, Plaintiff is the “prevailing party” entitled to fees under EAJA.

---

<sup>2</sup> Plaintiff also argued that the nondisclosure order was unlawful because it violated the First Amendment to the U.S. Constitution, and because the NSL statute, properly construed, did not permit the nondisclosure order in the changed circumstances of Plaintiff’s case. *See* Complaint 11-13. The Court did not reach those claims because it granted complete relief on the basis of Plaintiff’s claim under 18 U.S.C. § 3511. *See* Op. 32 (“Because the Court finds that the Government has not shown a good reason for continued non-disclosure of the Attachment, pursuant to Section 3511, the Court need not (and should not) consider Merrill’s other arguments . . .”).

**B. The Government's Positions Were Not Substantially Justified.**

“[T]he Government bears the burden of showing that its position was substantially justified.” *Healey v. Leavitt*, 485 F.3d 63, 67 (2d Cir. 2007) (internal quotations omitted). The government must demonstrate that its “position had a reasonable basis in both law and fact.” *Vacchio v. Ashcroft*, 404 F.3d 663, 674 (2d Cir. 2005). “To meet [this] burden, [the government] must make a ‘strong showing’ that its action was ‘justified to a degree that could satisfy a reasonable person.’” *See Healey*, 485 F.3d at 67 (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)).

In order to determine whether the government has met this burden, courts must “review both ‘the position taken by the United States in the civil action, [and] the action or failure to act by the agency upon which the civil action is based.’” *Ericksson v. Comm’r of Soc. Sec.*, 557 F.3d 79, 82 (2d Cir. 2009) (quoting 28 U.S.C. § 2412(d)(2)(D)). An award of fees is warranted if either the underlying government action or the government’s litigation position is unreasonable. *Healey*, 485 F.3d at 67 (“[T]he Government’s prelitigation conduct or its litigation position could be sufficiently unreasonable by itself to render the entire Government position not ‘substantially justified.’”) (internal quotation omitted). Plaintiffs make a few observations as to why the government will not be able to meet its burden here.

The position that the government took prior to the initiation of this lawsuit was unreasonable because the FBI insisted on maintaining the nondisclosure requirement with respect to material that it subsequently conceded in litigation it had no basis to suppress. As discussed below, the government took this position even though Plaintiff approached the government months in advance of filing this lawsuit in order to give the government the opportunity to voluntarily lift the nondisclosure order to the greatest extent possible.

As noted already, this lawsuit challenged the government's refusal to lift the remaining portions nondisclosure order that was first imposed on Mr. Merrill in 2004. Initially, the nondisclosure order forbade the Plaintiff from identifying himself as the recipient of an NSL or from disclosing anything else about the NSL, including the categories of records the FBI sought, which were specified in an Attachment that accompanied the NSL. Op. 3.

As a result of a prior lawsuit initiated in 2004 that resulted in favorable decisions from this Court and the Court of Appeals, the nondisclosure order was narrowed to some extent by 2010, when that case ended. Op. 3-7. In particular, this Court ordered the government to disclose certain categories listed in the Attachment corresponding to (1) material that the NSL statute itself identifies as permissible for the FBI to obtain using an NSL, and (2) material that the FBI had publicly acknowledged it obtained using an NSL. Op. 6 (citing *Doe v. Holder*, 703 F. Supp. 2d 313 (S.D.N.Y. 2010)). And in July 2010, the Court endorsed a settlement agreement under which Mr. Merrill would be able to identify himself as the recipient of the NSL, but which otherwise left the nondisclosure order in place. Op. 7.

The gag order then remained unchanged until Plaintiff approached Defendant's counsel in early 2014 to seek its voluntary termination. In response, the government insisted that it would maintain the nondisclosure order on the Attachment precisely as it stood in 2010, when the prior litigation ended, even though the government agreed to lift the rest of the nondisclosure order, permitting Mr. Merrill to discuss, for instance, the target of the 2004 NSL. Op. 7. Plaintiff filed suit to challenge the continuing validity of the gag on the Attachment.

This prelitigation position with respect to the Attachment was unreasonable and indefensible, as demonstrated by the government's own concessions in the course of subsequent litigation. In particular, before this litigation began, the government maintained that it was

entitled to suppress all of the categories of records listed in the Attachment, with the exception of six one- or two-word snippets that this Court had ordered the government to disclose in 2010. *See* Op. 7; Merrill Decl. Ex. C, ECF No. 19-3 (redacted attachment). However, after Plaintiff filed his motion for summary judgment the government “conceded that non-disclosure was no longer needed for certain categories of records the FBI seeks – in particular the request for ‘Internet Service Provider (ISP),’ ‘[a]ll e-mail addresses associated with the account,’ and ‘Screen names or other on-line names associated with the account.’” Op. 23. As this Court observed, the fact that the government only made this concession after Plaintiff filed suit and the FBI was required to justify continued non-disclosure “lends credence to [Plaintiff’s] argument that, for years, the non-disclosure requirement against him was overly broad and could not be supported by a ‘good reason.’” Op. 24.

Moreover, the government’s refusal to agree to lift the nondisclosure order in advance of this lawsuit was inconsistent with the formal remarks the President made on January 17, 2014—well before this litigation commenced—in which he directed the Attorney General to limit the duration of NSL gag orders. Op. 32; Manes Decl. Ex. S, ECF No. 20-19. The government’s position was also in tension with the FBI’s public announcement on February 3, 2015—before summary judgment briefing commenced—that it would presumptively terminate NSL nondisclosure orders “at the earlier of three years after the opening of a fully predicated investigation or the investigation’s close.” Manes Decl. Ex. T, ECF No. 20-20.

The positions that the government ultimately defended in litigation were also substantially unjustified. Even after conceding that the three phrases noted above had been improperly suppressed, the government continued to defend many inscrutable and patently unreasonable prohibitions on what Mr. Merrill could say about the Attachment. For example,

the government refused to permit Mr. Merrill to use the plural form of certain words in the Attachment, insisting that “while the public can know that [the FBI] seeks records of an ‘address’ and a ‘telephone number,’ there is a ‘good reason’ to prevent disclosure of the fact that the Government can seek ‘addresses’ and ‘telephone numbers.’” Op. 25. Similarly, the government sought “to prevent Merrill from disclosing that the Attachment requested ‘Subscriber day/evening telephone numbers’” even though the Government conceded that “it is already publicly known that the Government can use NSLs to obtain a telephone number, more generally.” Op. 24. This Court recognized that such “[r]edactions . . . defy common sense” and were an “example of the extreme and overly broad character of [the government’s] redactions.” Op. 25.

The government’s litigation position was unreasonable in other respects as well. The Declaration of Gary Perdue, which was the only evidence submitted by the FBI in support of the nondisclosure order, argued—under penalty of perjury—that one category of information should not be disclosed even though that category had not been subject to the nondisclosure requirement since at least 2010 and “was not redacted by the government in its submissions or even in the Perdue Declaration.” Op. 24 n.10. *Compare* Declaration of Gary Perdue ¶ 70, ECF No. 30 (“Perdue Decl.”), *with* Merrill Decl., Ex. C, ECF No. 19-3. This clear error suggests that the government was at least careless in staking out its litigation position, and that its purported justifications for maintaining the gag order were indeed “overly broad.” Op. 24.

Equally unjustifiable was the Government’s position that it could forbid Mr. Merrill from speaking about the categories of records that the FBI sought to obtain using an NSL even when that information was “*publicly known* (and acknowledged by other agencies).” Op. 31 (emphasis

in original).<sup>3</sup> In particular, nearly all of the suppressed categories in the Attachment matched information already publicly disclosed by the government in a 2009 Department of Justice Office of Legal Education Manual, Op. 18-21; a 2002 letter from the Deputy Attorney General to Senator Patrick Leahy that was published in a 2003 Senate Report, Op. 21-22; a 2008 Memorandum Opinion for the FBI General Counsel, Op. 22-23, 25-26; a 2007 Department of Justice Office of Inspector General Report, Op. 23 n.9, 26 n.11; and even the NSL statute itself, Op. 22-23.

The fact that all of these sources of official public information were published between 2003 and 2009—predating this litigation by several years—only underscores that the government truly had no “good reason” to maintain the gag on the Attachment for years after the investigation underlying the 2004 NSL was closed.

For all of these reasons, the government cannot meet its burden to show that its prelitigation conduct and its litigation positions were “substantially justified.” Plaintiff is therefore entitled to an award of attorney’s fees under EAJA.

## **II. THE FEES SOUGHT ARE REASONABLE.**

Courts typically determine the amount of a reasonable fee by multiplying “the number of hours reasonably expended on the litigation . . . by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). These calculations are attached as Exhibit A to the Second Declaration of Jonathan Manes.

---

<sup>3</sup> The government did not cite a single case supporting the proposition that it could lawfully impose a gag order to prevent a private citizen from speaking about information already in the public domain. Op. 30. All of the cases it relied upon involved classified information and arose in the context of Freedom of Information Act claims, rather than First Amendment free speech rights. Op. 30-32.

Plaintiff is entitled to recover reasonable attorneys' fees even though he has been represented by nonprofit counsel. *Blum v. Stenson*, 465 U.S. 886, 894-95 (1984). Plaintiff is also entitled to recover reasonable fees for time spent by law student interns on the litigation. *See, e.g., M.C. ex rel. E.C. v. Dep't of Educ.*, No. 12-cv-9281, 2013 WL 2403485, \*7-8 (S.D.N.Y. June 4, 2013); *Luciano v. Olsten Corp.*, 109 F.3d 111, 114 (2d Cir. 1997); *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989) (allowing compensation for the work of paralegals and law student interns at market rates).

**A. The Number of Hours Claimed Is Reasonable.**

Counsel in this case achieved a complete victory for the Plaintiff. The litigation was conducted in an expeditious and efficient manner. Indeed, the case proceeded directly from the filing of the Complaint and entry of a sealing order to cross-motions for summary judgment, which resolved the case in Plaintiff's favor. "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee"; "[n]ormally this will encompass all hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435.

Plaintiff, however, is not seeking compensation for all of the hours expended in this case. In particular, Plaintiff has excluded all time spent by paralegals, much of the time spent by Clinic Director David Schulz, and all of the time spent by Clinic students who did not keep contemporaneous time records. Second Manes Decl. ¶¶ 18, 22. Moreover, Plaintiff has excluded all time that the supervising attorneys and law student interns spent on pedagogical or learning activities, including team meetings, classroom discussions, and supervision meetings. *Id.* ¶ 21. For the same reason, Plaintiff has excluded time that the law student interns spent conducting background research on procedural and legal issues that are common to most federal litigation. *Id.* This Court has previously found a law clinic's billing to be reasonable where, as here, supervisors and students excluded "instructional time." *See, e.g., Moon v. Gab Kwon*, No.

99-cv-11810, 2002 WL 31512816, at \*4 (S.D.N.Y. Nov. 8, 2002); *M.C. ex rel. E.C.*, 2013 WL 2403485, at \*11-14.

In addition, Plaintiff's counsel has carefully reviewed all billing records to eliminate time not expended directly on the court proceedings. Second Manes Decl. ¶¶ 21, 25. Where billing entries did not sufficiently describe the nature of the work completed, the entries were deleted. *Id.* ¶ 25. As a result of all of these reductions, the resulting set of bills is entirely reasonable and is in fact modest in relation to the work actually performed.<sup>4</sup>

**B. The Rates Claimed Are Reasonable.**

Plaintiff seeks compensation for his counsel's time, including that of the law student interns, at reasonable market rates. For attorneys Manes and Schulz, reasonable market rates exceed the ordinary maximum rate specified by EAJA, which stands at \$195/hour for 2014 and 2015.<sup>5</sup> EAJA provides, however, that the maximum statutory rate may be increased in light of the "limited availability of qualified attorneys for the proceedings involved." 28 U.S.C. § 2412(d)(2)(A)(ii). The Supreme Court has interpreted this to mean that market rates may be awarded where the litigation required "attorneys having some distinctive knowledge or specialized skill needful for the litigation in question." *Pierce*, 487 U.S. at 572.

---

<sup>4</sup> Should the Court grant plaintiffs' request for fees, they also request compensation for the time they spend litigating this fee application. See, e.g., *Comm., I.N.S. v. Jean*, 496 U.S. 154 (1990). Rather than submit an incomplete accounting of their time at this juncture, plaintiffs will submit a complete accounting in conjunction with their reply brief.

<sup>5</sup> The ordinary limit on EAJA rates was set at \$125/hour in 1996, to be adjusted by the Court for "an increase in the cost of living." 28 U.S.C. § 2412(d)(2)(A). Based upon Consumer Price Index data for the New York Metro region, the adjusted EAJA rate was \$195/hour in both 2014 and 2015. See Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers—New York-Northern New Jersey-Long Island, NY-NJ-CT-PA—All Items, available at <http://data.bls.gov/cgi-bin/srgate> (Series ID: CUUSA101SA0) (indicating annual CPI of 166.9 for 1996, 260.230 for 2014, and 259.967 for the first half of 2015).



This case clearly required attorneys with “distinctive knowledge” and “specialized skill” in multiple areas where few lawyers have experience: First Amendment prior restraint law; First Amendment law as it applies to surveillance gag orders; and the law regarding public access to information in the national security context. It also required “distinctive knowledge” of the National Security Letter statute, which has been amended repeatedly since the PATRIOT Act, most recently during the course of this litigation, as well as the complicated history of the use of National Security Letters by the FBI.

There are few lawyers in the country with this distinctive knowledge and specialized skill. In fact, prior to the initiation of this lawsuit, there had been only a handful of legal challenges to NSL nondisclosure orders, and in all of those cases, the Plaintiff was represented by either the American Civil Liberties Union or the Electronic Frontier Foundation. Second Merrill Decl. ¶ 7.<sup>6</sup> There are thus very few lawyers willing or able to represent NSL recipients in challenges to nondisclosure orders. Indeed, Plaintiff had great difficulty finding a lawyer or law firm willing to represent him in this very case, even though he had already won partial relief from the gag order in 2010 as a result of protracted litigation in which he was represented by the ACLU. *Id.* ¶¶ 5-6.

The MFIA Clinic and its supervising attorney are thus among a very small handful of organizations that possess the requisite knowledge and skill to litigate this case. Second Merrill Decl. ¶ 10. The Clinic is unique in that its practice focuses exclusively on representing clients

---

<sup>6</sup> See *Doe v. Gonzales*, 386 F. Supp. 2d 66 (D. Conn. 2005) (challenge by plaintiff Connecticut Library Connection, represented by ACLU); *Internet Archive v. Mukasey*, No. 07-cv-6346 (N.D. Cal. filed Dec. 14, 2007) (plaintiff represented by ACLU and EFF). The Electronic Frontier Foundation has a number of ongoing cases challenging NSL on behalf of still-unnamed NSL recipients. See *In re National Security Letter*, No. 11-cv-2667 (N.D. Cal.); *In re National Security Letter*, No. 11-cv-2173 (N.D. Cal.); *In re National Security Letter*, No. 13-mc-80089 (N.D. Cal.) (same); *In re National Security Letter*, No. 13-cv-1165 (N.D. Cal.) (same).

*pro bono* in First Amendment and information access lawsuits seeking to increase government transparency on matters of public concern in the national security and law enforcement context. Second Manes Decl. ¶ 2; Second Merrill Decl. ¶¶ 8-9. Moreover, both of the supervising attorneys in the MFIA Clinic have focused a major part of their practices on litigating constitutional and statutory cases that challenge government secrecy on matters of public concern relating to national security and law enforcement.

In particular, since his first year practicing law, Jonathan Manes has developed specialized expertise in transparency litigation with respect national security and law enforcement programs. Second Manes Decl. ¶¶ 7, 9-10. Mr. Manes began his career working under the lawyers at the ACLU who represented Mr. Merrill in his first challenge to the NSL nondisclosure Order. Second Manes Decl. ¶ 8. From that time forward he has continuously been involved in national security transparency litigation. *See, e.g., ACLU v. Dep't of Defense*, No. 09-cv-8071 (S.D.N.Y. filed Sept. 22, 2009) (lawsuit seeking access to records regarding U.S. detention facility in Bagram, Afghanistan); *ACLU v. Dep't of Justice*, No. 10-cv-436 (D.D.C. filed Mar. 16, 2010) (lawsuit seeking access to records regarding targeted killings); *Qatanani v. Dep't of Justice*, No. 12-cv-4042 (D.N.J. filed June 29, 2012); *Qatanani v. Dep't of Homeland Security*, No. 12-cv-5379 (D.N.J. filed Aug. 24, 2012); *ACLU v. NSA*, No 13-cv-9198 (S.D.N.Y. filed Dec. 30, 2013) (seeking rules that govern surveillance of U.S. persons under Executive Order 12,333); *In re Orders Interpreting Section 215 of the PATRIOT Act*, No. Misc 13-02, 2013 WL 5460064 (Foreign Intel. Surv. Ct. 2013) (asserting qualified right of public access to important opinions of the Foreign Intelligence Surveillance Court).

In addition, Mr. Manes has extensive specialized knowledge and expertise regarding National Security Letters in particular, as well as the broader issue of secrecy regarding

surveillance programs. Second Manes Decl. ¶ 11 (describing academic articles and *amicus* brief written on these topics.).

Mr. Manes also has significant experience litigating other First Amendment claims against law enforcement agencies. *See, e.g., See Ramos v. Flowers*, 56 A.3d 869 (N.J. App. Div. 2012) (appeal recognizing First Amendment right to videorecord on-duty police officers); *George v. Rehiel*, No. 10-cv-586 (E.D. Pa. filed Feb. 10, 2010) (challenge under First and Fourth Amendment to arrest and detention at airport predicated on possession of Arabic-language materials). And Mr. Manes has been involved in numerous constitutional challenges to national security programs that involved difficult and complex issues of secrecy and classified evidence. *See, e.g., Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010) (challenge to constitutionality of planned targeted killing of U.S. citizen abroad); *Salahi v. Obama*, 710 F. Supp. 2d 1 (D.D.C. 2010) (*habeas corpus* litigation on behalf of Guantanamo detainee); *Jalatzai v. Gates*, No. 10-cv-319 (D.D.C. filed Feb. 26, 2010) (*habeas corpus* litigation on behalf of individuals detained by the United States at Bagram, Afghanistan).

Mr. Schulz's experience in these and related areas is even more extensive. Mr. Schulz has been practicing in the area of access law and First Amendment for more than 35 years, since entering practice as a media lawyer in 1978. Second Manes Decl. ¶¶ 13-15. Mr. Schulz has frequently taught these subjects as an adjunct professor at Columbia Law School and Fordham Law School, and writes an annual summary of developments in the law of access for the Practicing Law Institute. *Id.* ¶ 16. Over the course of his career, he has litigated many cases asserting statutory and First Amendment claims for public access to information in the national security context. Second Manes Decl. ¶ 17. He has also advised numerous journalists and news organizations on First Amendment and other legal issues involved in gathering and publishing

news in the national security context, where public disclosure of classified or otherwise sensitive information is often at issue. *Id.*

Because both Manes and Schulz possess distinctive knowledge and specialized skill that are in scarce supply and were required to litigate this case, Plaintiff should be awarded fees for their work at market rates, rather than the ordinary EAJA maximum rate of \$195. In particular, Plaintiff should be awarded fees at the rate of \$345 and \$355 per hour for Mr. Manes's time in 2014 and 2015, respectively, and \$485 and \$500 per hour for Mr. Schulz's time in those same years. These hourly rates reflect the market rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998).

The rates sought for Mr. Schulz's time reflect Mr. Schulz's discounted hourly rate, which is charged to regular clients of his Firm for similar work litigating cases involving access to information. The rates sought for Mr. Manes's work reflect the market rates charged by Mr. Schulz's firm for similar work by senior associates with Mr. Manes's level of experience. Second Manes Decl. ¶ 27. These rates are well within the range of fees previously awarded to lawyers with comparable levels of experience in civil rights cases in this district. *See, e.g., Vilku v. City of New York*, No. 06-cv-2095, 2009 WL 1851019, at \* 4 (S.D.N.Y. June 26, 2009) ("A review of precedent in the Southern District reveals that rates awarded to experienced civil rights attorneys over the past ten years have ranged from \$250 to \$600, and that rates for associates have ranged from \$200 to \$350, with average awards increasing over time.") (collecting numerous cases), *vacated on other grounds*, No. 09-1178, 2010 WL 1571616 (2d Cir. Apr. 21, 2010); *LV v. N.Y. City Dep 't of Educ.*, 700 F. Supp. 2d 510,518-19 (S.D.N.Y. 2010) (awarding rates up to \$600/hour in a civil rights case); *Adorno v. Port Auth. of N.Y. &*

*N.J.*, 685 F. Supp. 2d 507 (S.D.N.Y. 2010) (awarding rates up to \$550/hour to civil rights litigators). These rates are also consistent with market rates that the Department of Justice has endorsed for attorneys practicing in the Washington, D.C. area—known as the “Laffey Matrix”—where market rates are roughly equivalent to those in this district. Second Manes Decl. ¶¶ 28-29; *see generally Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985).

Case law and evidence of market rates also establish that \$150 per hour is a reasonable rate for law student interns. Second Manes Decl. ¶ 31. The Second Circuit has affirmed that law student interns are billed at a similar rate to paralegals. *Luciano*, 109 F.3d at 114. Two years ago, Judge McMahon of this Court concluded that \$125 was an appropriate hourly rate for law student interns in the Fordham Law School clinical program. *M.C. ex rel. E.C.*, 2013 WL 2403485, \*7-8 (S.D.N.Y. June 4, 2013). More recently, the Court of Appeals for Veterans Claims approved an EAJA fee application submitted by a Harvard Law School clinic seeking an hourly rate of \$145 for law students representing a veteran in a disability benefit appeal. *See Froio v. McDonald*, No. 12-3483, 2015 WL 3439252, at \*22-23 (U.S. Ct. App. Vet. Cl. May 29, 2015); Application for Appellant at 11-12, *Froio*, No. 12-3483 (U.S. Ct. App. Vet. Cl. filed June 11, 2014). The rate sought here is also a significant discount from the market rates charged in this district for summer associates and law student clerks, even though the law student interns who represented the Plaintiff in this case have the same level of experience. Second Manes Decl. ¶ 32.

### **III. PLAINTIFF IS ENTITLED TO AN AWARD OF COSTS.**

This Court should also award Plaintiff the “costs incurred . . . in the litigation” against the government because he is a “prevailing party.” 28 U.S.C. § 2412(a)(1); *supra* § I.A. The costs

that Plaintiff seeks here are minimal and non-controversial, consisting only of the mandatory \$350 filing fee assessed by this Court. Second Manes Decl. ¶ 33; 28 U.S.C. § 1920.

CONCLUSION

For these reasons, the Court should grant Plaintiff's motion for an award of fees and costs.

Respectfully submitted,

/s/Jonathan Manes

Jonathan Manes, supervising attorney  
David A. Schulz, supervising attorney  
MEDIA FREEDOM AND INFORMATION  
ACCESS CLINIC, YALE LAW SCHOOL  
P.O. Box. 208215  
New Haven, CT 06520  
Tel: (203) 432-9387  
Fax: (203) 432-3034  
jonathan.manes@yale.edu

*Attorneys for Plaintiff Nicholas Merrill*

Dated: December 16, 2015  
New Haven, CT

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS MERRILL,

Plaintiff,

v.

LORETTA LYNCH, in her official capacity  
as Attorney General of the United States, and  
JAMES B. COMEY, in his official capacity  
as Director of the Federal Bureau of  
Investigation,

Defendants.

14 CIV. 9763 (VM)

**SECOND DECLARATION OF NICHOLAS MERRILL**

I, Nicholas Merrill, declare as follows:

1. I am the Plaintiff in the above-captioned action.
2. I submit this declaration in support of a motion for an award of attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. §2412.
3. At the time this action was filed I had a net worth of less than \$2,000,000.
4. I brought this case in order to challenge the nondisclosure order that prevented me from speaking about aspects of the National Security Letter that the FBI served on me in 2004 ("2004 NSL").
5. This case was the second lawsuit I filed challenging the nondisclosure order that was issued together with the 2004 NSL. In the first case, filed in 2004, I was represented by the American Civil Liberties Union's National Security Project. That case ended in 2010 with a settlement agreement that allowed me to identify myself as the recipient of the 2004 NSL but left in place a nondisclosure order that prevented me from speaking about much of the 2004 NSL.

Under the settlement, I reserved the right to bring a subsequent challenge the remaining portions of the nondisclosure order in subsequent litigation.

6. In the years that followed the 2010 settlement, I wanted to bring a renewed legal challenge to the remaining portions of the gag order, but I was unable to obtain legal representation for such a case on a *pro bono* basis. I did not have the means to retain paid counsel to bring this challenge.

7. I have closely followed legal challenges to NSLs and NSL nondisclosure orders that have been brought by other NSL recipients. There have only been a handful of such legal challenges since the NSL statute was amended by the PATRIOT Act in 2001. In all of the challenges that I am aware of, the NSL recipients have been represented by one of two organizations, the American Civil Liberties Union, which previously represented me, and the Electronic Frontier Foundation, which is currently litigating NSL cases in federal court in California.

8. In 2013, my former lawyers at the ACLU referred me to the Media Freedom and Information Access Clinic (“MFIA”) at Yale Law School for potential representation in a renewed challenge to the nondisclosure order. I was informed that MFIA is a law school clinic staffed by Yale Law School students that focuses on representing clients in transparency and free speech cases. I understood that the supervising attorneys in the clinic had extensive prior experience working on transparency and free speech cases, particularly in the national security context.

9. In particular, I understood that David Schulz, the MFIA Clinic’s director, was a highly respected First Amendment lawyer with decades of practice experience, and that Jonathan Manes, a supervising attorney in the MFIA Clinic, had previously worked with my former



lawyers at the ACLU's National Security Project and had extensive experience litigating constitutional cases against national security and law enforcement agencies.

10. It thus appeared to me that the MFIA Clinic was among a very small handful of legal organizations with the expertise to represent me in a challenge to the gag order, and with the potential willingness to do so without charging me legal fees. I subsequently retained the MFIA Clinic to represent me on this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2015, at New York, NY.



---

Nicholas Merrill

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS MERRILL,

Plaintiff,

v.

LORETTA LYNCH, in her official capacity  
as Attorney General of the United States, and  
JAMES B. COMEY, in his official capacity  
as Director of the Federal Bureau of  
Investigation,

Defendants.

14 CIV. 9763 (VM)

**SECOND DECLARATION OF JONATHAN MANES**

I, Jonathan Manes, declare as follows:

1. I am a Clinical Lecturer in Law, Research Scholar, and Abrams Clinical Fellow at Yale Law School, where I serve as a supervising attorney of the Media Freedom and Information Access Clinic (“MFIA Clinic” or “Clinic”), counsel for plaintiff in this action.

2. The mission of the MFIA Clinic is to promote democracy by increasing government transparency and defending free speech rights on matters of public concern. *See* <http://isp.yale.edu/media-freedom-and-information-access-clinic> (last visited December 15, 2015). The Clinic regularly litigates First Amendment, freedom of information, and access claims on behalf of journalists, researchers, activists, and advocates like the Plaintiff in this case. The Clinic has a particular focus on litigating cases that seek greater transparency in the context of national security and law enforcement.

3. The Clinic is composed of two licensed attorneys—myself and David A. Schulz—and approximately 15 Yale Law School students who work directly on the Clinic’s cases, under our supervision, in order to obtain clinical legal training. Yale law students receive

academic credit for participating in the Clinic. Law students from other ABA accredited institutions are also hired by the MFIA Clinic to work for pay during periods when Yale Law School is not in session.

4. I submit this declaration in support of Plaintiff's application for an award of attorneys' fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412. As described below, the MFIA Clinic seeks to recover for 377.7 hours collectively spent working on this case through entry of Judgment, which amounts to \$82,689 at reasonable market rates. In addition, the Clinic incurred \$350 in costs. Our total request for fees and costs is therefore \$83,039.

**Attorneys Working on this Matter at the MFIA Clinic**

Jonathan Manes

5. In my role as a supervising attorney of the MFIA Clinic, I have worked on this case from its inception and have served as lead counsel on this case throughout.

6. I graduated from Yale Law School in 2008. Following that, I served as a law clerk to Justice Morris J. Fish at the Supreme Court of Canada.

7. From 2009 to 2011 I worked as a litigator at the American Civil Liberties Union's National Security Project, where I held the National Security Project Fellowship. In that position, I litigated a variety of cases challenging secrecy in the context of national security programs. *See, e.g., ACLU v. Dep't of Defense*; No. 09-cv-8071 (S.D.N.Y. filed Sept. 22, 2009) (lawsuit seeking access to records regarding U.S. detention facility in Bagram, Afghanistan); *ACLU v. Dep't of Justice*, No. 10-cv-436 (D.D.C. filed Mar. 16, 2010) (lawsuit seeking access to records regarding targeted killings). I also litigated several high-profile cases raising First Amendment claims and other constitutional challenges to national security programs. *See, e.g.,*

*George v. Rehiel*, No. 10-cv-586 (E.D. Pa. filed Feb. 10, 2010) (challenge under First and Fourth Amendment to arrest and detention at airport predicated on possession of Arabic-language materials); *Am. Academy of Religion v. Napolitano*, 573 F.3d 115 (2d Cir. 2009) (First Amendment challenge to the denial of visa to scholar Tariq Ramadam); *Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010) (challenge to constitutionality of planned targeted killing of U.S. citizen abroad); *Salahi v. Obama*, 710 F. Supp. 2d 1 (D.D.C. 2010) (*habeas corpus* litigation on behalf of Guantanamo detainee); *Jalatzai v. Gates*, No. 10-cv-319 (D.D.C. filed Feb. 26, 2010) (*habeas corpus* litigation on behalf of individuals detained by the United States at Bagram, Afghanistan).

8. At the ACLU, I was supervised directly by attorneys Jameel Jaffer and Melissa Goodman, who were primary counsel for Nicholas Merrill in his first challenge to the NSL nondisclosure order.

9. I next worked from 2011 through 2013 as a litigator at the New Jersey law firm, Gibbons P.C., where I held the Gibbons Fellowship in Public Interest and Constitutional Law. In that position, I had primary responsibility for litigating a variety of *pro bono*, public interest civil rights and civil liberties cases, including First Amendment and transparency cases in the national security and law enforcement contexts. For instance, I worked on a number of Freedom of Information lawsuits raising national security issues. *See, e.g., Qatanani v. Dep't of Justice*, No. 12-cv-4042 (D.N.J. filed June 29, 2012); *Qatanani v. Dep't of Homeland Security*, No. 12-cv-5379 (D.N.J. Aug. 24, 2012). I argued a First Amendment appeal that resulted in the recognition of a constitutional right to record on-duty police officers in public. *See Ramos v. Flowers*, 56 A.3d 869 (N.J. App. Div. 2012). I was also involved in litigating a number of other constitutional cases against law enforcement officials. *See, e.g., Hassan v. City of New York*, No.

12-cv-3401 (D.N.J. filed June 6, 2012) (First and Fourteenth Amendment challenge to NYPD's indiscriminate surveillance of Muslim communities in New Jersey); *Alves v. Main*, No. 01-cv-789, 2012 WL 6043272 (D.N.J. Dec. 4, 2012) (approving class action settlement regarding mental health treatment at civil commitment facility).

10. In my current position as Abrams Clinical Fellow and supervising attorney in the MFIA Clinic, I serve as lead counsel and principal supervisor in several ongoing transparency and free speech cases. *See, e.g., SUK, Inc. v. Flushing Workers Center*, No. 155192/2013 (N.Y. Sup. Ct. filed 2013) (defending defamation lawsuit on First Amendment grounds); *Human Rights Watch v. Dep't of Justice*, No. 13-cv-7360 (S.D.N.Y. filed Oct. 18, 2013) (lawsuit seeking information about restrictive custody conditions at federal prisons); *Intellectual Property Watch v. U.S. Trade Representative*, No. 13-cv-8955 (S.D.N.Y. Dec. 18, 2013) (seeking records regarding negotiation of Trans-Pacific Partnership Agreement); *Treatment Action Group v. Food and Drug Admin.*, No. 15-cv-0976 (D. Conn. filed June 25, 2015) (seeking public disclosure of clinical trial data submitted to FDA prior to approval of new drugs). I also co-supervise with David Schulz many of the other cases on the clinic's docket, including cases asserting statutory and constitutional rights of access to information in the national security context. *See, e.g., ACLU v. NSA*, No 13-cv-9198 (S.D.N.Y. filed Dec. 30, 2013) (seeking rules that govern surveillance of U.S. persons under Executive Order 12,333); *In Re Orders Interpreting Section 215 of the PATRIOT ACT*, No. Misc 13-02, 2013 WL 5460064 (Foreign Intel. Surv. Ct. 2013) (asserting qualified right of public access to important opinions of the Foreign Intelligence Surveillance Court).

11. I have particular expertise on the issue of National Security Letters, including the history of their use by the FBI since 2001, and the constitutionality of the nondisclosure orders

that routinely accompany NSLs. For instance, I was the lead author of an *amicus* brief submitted on behalf of a group of First Amendment scholars in a recent Ninth Circuit appeal challenging the constitutionality of the nondisclosure provisions of the NSL statute. *See* Brief of *Amici Curiae* Floyd Abrams Institute for Freedom of Expression and First Amendment Scholars, *In Re: National Security Letter*, No. 13-16732 (9th Cir. filed Mar. 28, 2014). I have also written academic articles discussing the manner in which nondisclosure orders like the one that bound Mr. Merrill serve to obscure the government's interpretation of the NSL statute and other surveillance laws. *See, e.g.*, Jonathan Manes, *Secret Law*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2601775](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2601775).

12. I am a member in good standing of the Bars of New York and New Jersey, and the Bar of this Court.

David A. Schulz

13. David A. Schulz is a Clinical Lecturer in Law and co-Director of the MFIA Clinic. He is also a Senior Research Scholar at the Abrams Institute for Freedom of Expression at Yale Law School. In those capacities, he has overall responsibility for overseeing the work of the MFIA Clinic. Mr. Schulz co-supervised this case with me.

14. In addition to Mr. Schulz's work at the MFIA Clinic, he is a partner in the New York office of Levine Sullivan Koch & Schulz, LLP (LSKS), a law firm specializing in media law and intellectual property litigation. He is a member in good standing of the Bars of New York and the District of Columbia.

15. Since graduating from Yale Law School in 1978 Mr. Schulz has counseled and represented journalists and news organizations in all aspects of their collection and dissemination of the news. For 25 years Mr. Schulz worked in the media law group at Rogers & Wells (now

Clifford Chance US), seven years as an associate and eighteen years as a partner—five years as head of the Media Law Practice group. In 2003 Mr. Schulz left to open the New York office of LSKS.

16. Before becoming co-director of the MFIA Clinic at Yale in 2010, Mr. Schulz taught media law as an adjunct professor at Columbia Law School and Fordham Law School in New York City. He has authored numerous articles and reports on issues surrounding newsgathering and access rights, and he writes an annual summary of developments in the law of access for the Practicing Law Institute.

17. David Schulz has a great deal of experience litigating First Amendment and freedom of information cases in the national security context. For instance, he represented the Associated Press in long-running litigation to obtain access to basic information regarding the government's treatment of detainees at Guantanamo Bay, Cuba. *See, e.g., Assoc. Press v. Dep't of Defense*, 554 F.3d 279 (2d Cir. 2009). He represents a coalition of news media in a First Amendment case seeking access to video footage of force-feedings of inmates at Guantanamo Bay. *See Dhiab v. Obama*, 952 F. Supp. 2d 154 (D.D.C. 2013). He has also advised numerous journalists and news organizations on legal issues involved with gathering and publishing news in the national security context, particularly where classified and other secret information is involved.

Law Student Interns

18. The students in the MFIA Clinic who have worked on this case are Yale Law School students Benjamin Graham, Matthew Halgren, Nicholas Handler, and Amanda Lynch, and University of Pennsylvania law student Jana Fitzgerald, who worked at the Clinic during the summer of 2014. Each of these students had completed at least two semesters of law school

when they worked on the case. Certain other MFIA Clinic students worked on this case, but because I was unable to locate any contemporaneous records of the hours that those students spent on the case, Plaintiff does not seek any recovery of fees for their work.

19. MFIA Clinic students worked on all aspects of this litigation, including drafting, editing, and finalizing court filings, including the complaint and summary judgment papers. Students conducted the fact research that was essential to Plaintiff's victory in this case. Students also conducted email correspondence and telephone conversations with opposing counsel over the course of the litigation. In all of this work, students worked under my direct supervision, and that of David Schulz.

20. I note that because Plaintiff's reply and opposition brief on summary judgment was due after the end of the 2015 academic year, MFIA Clinic students were unable to participate in drafting that brief to the same extent they participated in other aspects of the case. As a result, the ratio of supervisor-time to student-time for that portion of the litigation is skewed upward.

### **Calculation of Fee Award**

21. In calculating the hours worked on this case, I have excluded all time that attorneys and law student interns spent in team supervision meetings, classroom discussion, and other pedagogical activity. We have also excluded time that the students spent doing background research on legal and procedural issues that are common to most federal litigation. Accordingly, we seek recovery only for time actually dedicated to preparing the court filings and other legal work product that were specific to this matter and necessary to litigate this case through to Judgment.



22. I have also excluded all time spent by paralegals in this case, including all time they spent finalizing court filings and physically filing documents under seal. Moreover, Plaintiff is claiming only a fraction of the time that was spent on this case by David Schulz.

23. As set forth in the attached summary, labeled Exhibit A, I have devoted 107.7 hours to this case. David Schulz seeks recovery for 12 hours of time spent on the case. The MFIA Clinic students collectively spent 258 hours working on this case.

24. The hours that I spent on this litigation and the specific work completed are set out in Exhibit B. The hours that David Schulz spent on this litigation and the specific work he completed are set out in Exhibit C. The hours that each of the MFIA Clinic students spent on this litigation and the specific work each of them completed are set out in Exhibit D.

25. The time reflected in Exhibits A through D was obtained from records contemporaneously maintained by each timekeeper. I reviewed the descriptions of the work performed by each timekeeper in order to eliminate pedagogical time and other non-billable time, as described above, and also to make uniform each timekeeper's descriptions of the documents and other legal work product at issue in the various stages of the case. Where a timekeeper's time entry did not sufficiently specify the nature of the work completed to discern what tasks were accomplished, I deleted the entry.

26. Plaintiff seeks recovery for my time an hourly rate of \$345 in 2014 and \$355 in 2015. These reflect the discounted hourly billing rates charged in those years for attorneys associated with Levine, Sullivan, Koch & Schulz LLP, who had my level of professional experience.

27. These rates are also consistent with the standard billing rates that the Civil Division of the Office of the U.S. Attorney for the District of Columbia has developed to govern

fee awards in fee-shifting cases within that jurisdiction. *See* Laffey Matrix 2014-2015, [http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix\\_2014-2015.pdf](http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf) Those guidelines recommend that attorneys in their 8th year of practice be awarded fees at a rate of \$370/hour and that attorneys in their 4th through 7th years of practice are billed at \$300/hour. The Adjusted Laffey Matrix, which is an alternative to the Department of Justice's guidelines, specifies rates of \$582/hour for 8th year associates and \$402/hour for attorneys in their 4th through 7th years. *See* Adjusted Laffey Matrix, <http://www.laffeymatrix.com/see.html>.

28. I was in my seventh and eighth years of practice during the course of this litigation. While the Laffey Matrix and Adjusted Laffey Matrix rates are meant to reflect market rates in the Washington, D.C. area, rates for legal services in the New York metro area, where I practice, are roughly equivalent.

29. Plaintiff seeks recovery for David Schulz's time at an hourly rate of \$485 in 2014 and \$500 in 2015. These reflect Mr. Schulz's discounted hourly billing rate, charged to the regular clients of his firm, Levine, Sullivan, Koch & Schulz LLP, for litigation involving access to information and related claims.

30. Plaintiff seeks recovery for the time of the MFIA Clinic students at the rate of \$150 per hour. Cases from two years ago awarding slightly lower fees for law student work confirm that this is a reasonable student rate. *See M.C. ex rel. E.C. v. Dep't of Educ.*, No. 12 Civ. 9281(CM)(AJP), 2013 WL 2403485, at \*7-8 (S.D.N.Y. June 4, 2013) (approving an hourly rate of \$125 for Fordham law students working in a clinical program). *See Froio v. McDonald*, No. 12-3483, 2015 WL 3439252, at \*22-23 (U.S. Ct. App. Vet. Cl. May 29, 2015) (approving EAJA fee application claiming a rate of \$145 for the work of law students in a Harvard Law School clinic representing a veteran in a disability benefits appeal); Application for Appellant at

11-12, *Froio*, No. 12-3483 (U.S. Ct. App. Vet. Cl. filed June 11, 2014) (asserting an hourly rate of \$145 for law student interns).

31. By way of comparison, in 2014 Levine, Sullivan, Koch & Schulz LLP charged clients \$225 per hour for work by summer associates and law student clerks; in 2015 this rate was \$235 per hour. The rate requested for the Clinic students working on this case is less than two-thirds the market rate charged for similar law student work.

**Summary of Out-of-Pocket Expenses.**

32. In pursuing this case, the MFIA Clinic incurred direct out of pocket expenses totaling \$350. These costs consist entirely of the mandatory \$350 filing fee imposed by the U.S. District Court for the Southern District of New York. *See* ECF No. 1 (docket entry noting payment).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 16, 2015  
New Haven, CT

/s/Jonathan Manes  
Jonathan Manes

# **EXHIBIT A**

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Jonathan Manes (2015)	88.5	\$355.00	\$31,417.50
Jonathan Manes (2014)	19.2	\$345.00	\$6,624.00
David A. Schulz (2015)	9.0	\$500.00	\$4,500.00
David A. Schulz (2014)	3.0	\$485.00	\$1,455.00
Jana FitzGerald	1.5	\$150.00	\$225.00
Amanda Lynch	80.1	\$150.00	\$12,015.00
Benjamin Graham	31.2	\$150.00	\$4,672.50
Matthew Halgren	99.0	\$150.00	\$14,850.00
Nicholas Handler	46.2	\$150.00	\$6,930.00
<b>TOTAL FEES</b>	<b>377.7</b>		<b>\$82,689.00</b>

## **EXHIBIT B**

Date	Name	Description	Hours	Rate	Total
3/25/2014	Jonathan Manes	Editing and commenting on first draft of complaint.	1.5	\$345.00	\$517.50
4/15/2014	Jonathan Manes	Editing and Revising complaint.	3.1	\$345.00	\$1,069.50
4/18/2014	Jonathan Manes	Telephone conference with J. Jaffer regarding complaint	0.5	\$345.00	\$172.50
9/19/2014	Jonathan Manes	Edits and comment on the most recent draft of the complaint	1.6	\$345.00	\$552.00
10/1/2014	Jonathan Manes	Final edits on complaint before sending to client for review, with clarifying questions for client	1.2	\$345.00	\$414.00
10/9/2014	Jonathan Manes	Phone call with Client to discuss complaint, other aspects of case	0.4	\$345.00	\$138.00
10/15/2014	Jonathan Manes	Discuss contents of NSL with M. Halgren and potential fact research to demonstrate absence of good reason for gag.	0.4	\$345.00	\$138.00
10/23/2014	Jonathan Manes	Reviewing and commenting on outline of motion for summary judgment on First Amendment claims.	0.9	\$345.00	\$310.50
10/23/2014	Jonathan Manes	Reviewing legal research memo re: claim that NSL statute does not continue to authorize the gag.	0.6	\$345.00	\$207.00
11/16/2014	Jonathan Manes	Reviewing and commenting on outline of SJ memo	1.4	\$345.00	\$483.00
11/22/2014	Jonathan Manes	Reviewing, editing and commenting on draft of MSJ brief	1.8	\$345.00	\$621.00
12/1/2014	Jonathan Manes	Review and edits to the Complaint	1.5	\$345.00	\$517.50
12/2/2014	Jonathan Manes	Review and edits to the Complaint	1.3	\$345.00	\$448.50
12/6/2014	Jonathan Manes	Review most recent version of the Complaint	0.5	\$345.00	\$172.50
12/8/2014	Jonathan Manes	Review and edits to the Related Case Statement	1.4	\$345.00	\$483.00
12/9/2014	Jonathan Manes	Final review of the Complaint	0.4	\$345.00	\$138.00
12/10/2014	Jonathan Manes	Finalizing and PDFing Complaint, Civil Cover Sheet, Related Case Statement, and Summonses	0.2	\$345.00	\$69.00
12/18/2014	Jonathan Manes	Arranging and overseeing service of process on defendants	0.5	\$345.00	\$172.50
1/30/2015	Jonathan Manes	Review correspondence with opposing counsel	0.1	\$355.00	\$35.50
2/4/2015	Jonathan Manes	Review correspondence with opposing counsel	0.1	\$355.00	\$35.50
2/6/2015	Jonathan Manes	Review correspondence to/from opposing counsel	0.1	\$355.00	\$35.50
2/9/2015	Jonathan Manes	Telephone conference with Benjamin Torrance, AUSA re: case management and sealing order	0.3	\$355.00	\$106.50
2/11/2015	Jonathan Manes	Review, edit, and comment on draft proposed order re: sealing of material subject to nondisclosure order.	0.2	\$355.00	\$71.00
2/12/2015	Jonathan Manes	Final review of proposed order re: sealing material subject to nondisclosure order	0.2	\$355.00	\$71.00
2/12/2015	Jonathan Manes	Edited and revised Pre-Motion Letter to Judge Marrero	1.6	\$355.00	\$568.00
2/13/2015	Jonathan Manes	Editing and commenting on draft Mem of Law in Support of MSJ: prelim statement and facts	2.2	\$355.00	\$781.00
2/14/2015	Jonathan Manes	Editing and comments on draft Mem of Law in Support of MSJ: statutory argument	0.9	\$355.00	\$319.50
2/15/2015	Jonathan Manes	Editing and comments on draft Mem of Law in Support of MSJ: First Amendment argument	1.7	\$355.00	\$603.50
2/16/2015	Jonathan Manes	Editing and comments on draft Mem of Law in Support of MSJ: First Amendment argument	1.5	\$355.00	\$532.50
2/20/2015	Jonathan Manes	Review opposing counsel's edits/additions to pre-motion letter for submission to Judge Marrer and make additional edits.	0.7	\$355.00	\$248.50

2/26/2015	Jonathan Manes	Revising and commenting on entire mem of law in support of MSJ	4.5	\$355.00	\$1,597.50
2/28/2015	Jonathan Manes	Revise Merrill Declaration in Support of MSJ	0.8	\$355.00	\$284.00
3/1/2015	Jonathan Manes	Revise Merrill Declaration in Support of MSJ	2.1	\$355.00	\$745.50
3/1/2015	Jonathan Manes	Revise Merrill Declaration in Support of MSJ	0.8	\$355.00	\$284.00
3/2/2015	Jonathan Manes	Finalize and send Merrill Declaration to Nicholas Merrill for review and comment.	0.1	\$355.00	\$35.50
3/2/2015	Jonathan Manes	Review and edit mem of law in support of MSJ: prelim statement and fact sections	1.3	\$355.00	\$461.50
3/3/2015	Jonathan Manes	Review and edit mem of law in support of MSJ: prelim statement and fact sections	2.9	\$355.00	\$1,029.50
3/3/2015	Jonathan Manes	Review and edit mem of law in support of MSJ: First Amendment section	2.8	\$355.00	\$994.00
3/3/2015	Jonathan Manes	Review and edit mem of law in support of MSJ: First Amendment section	0.7	\$355.00	\$248.50
3/3/2015	Jonathan Manes	Review and edit mem of law in support of MSJ: statutory section	1.1	\$355.00	\$390.50
3/3/2015	Jonathan Manes	Telephone call with client to discuss Merrill Declaration in support of MSJ and questions related to MSJ	0.2	\$355.00	\$71.00
3/7/2015	Jonathan Manes	Review and edit Rule 56.1 statement in support of MSJ	1.4	\$355.00	\$497.00
3/8/2015	Jonathan Manes	Review and edit Merrill Declaration in Support of MSJ	0.1	\$355.00	\$35.50
3/8/2015	Jonathan Manes	Review and edit Manes Declaration in Support of MSJ	1.3	\$355.00	\$461.50
3/8/2015	Jonathan Manes	Review and edit Rule 56.1 statement in support of MSJ	1.2	\$355.00	\$426.00
3/8/2015	Jonathan Manes	Email communication with Nicholas Merrill re: revision to Merrill Declaration, and finalizing declaration for filing	0.3	\$355.00	\$106.50
3/9/2015	Jonathan Manes	Pre-Motion telephone conference with the Court and discussion with team before/after.	0.8	\$355.00	\$284.00
3/9/2015	Jonathan Manes	Communicating with Nicholas Merrill re: finalizing and executing declaration	0.1	\$355.00	\$35.50
3/9/2015	Jonathan Manes	Edits to Memo of Law in Support of SJ, Rule 56.1 Statement and Manes Declaration	3.5	\$355.00	\$1,242.50
3/10/2015	Jonathan Manes	Final review of Rule 56.1 Statement and Manes Declaration.	0.3	\$355.00	\$106.50
3/10/2015	Jonathan Manes	Final review of mem of law in support of MSJ	0.3	\$355.00	\$106.50
3/10/2015	Jonathan Manes	Overseeing final production of MSJ filing; reviewing final documents for filing.C218	2.0	\$355.00	\$710.00
3/11/2015	Jonathan Manes	Finalize and arrange filing of summary judgment motion under seal.	0.3	\$355.00	\$106.50
3/12/2015	Jonathan Manes	Email correspondence with opposing counsel re: review of sealed filing for public release, per sealing order.	0.1	\$355.00	\$35.50
3/12/2015	Jonathan Manes	Email correspondence with opposing counsel re: FBI review of sealed filing for public release.	0.1	\$355.00	\$35.50
3/13/2015	Jonathan Manes	Telephone call from chambers requesting courtesy copy of MSJ papers.	0.1	\$355.00	\$35.50
3/13/2015	Jonathan Manes	Preparing and sending courtesy copies of MSJ filing to chamber	1.0	\$355.00	\$355.00



3/17/2015	Jonathan Manes	Review correspondence with opposing counsel re: FBI review of sealed MSJ filing for public release.	0.2	\$355.00	\$71.00
4/3/2015	Jonathan Manes	Review correspondence from opposing counsel re: extension of deadline for opposition to MSJ/motion to dismiss.	0.1	\$355.00	\$35.50
4/6/2015	Jonathan Manes	Correspondence with opposing counsel and with MH, AL, BG, and NH re: modifications to the briefing schedule	0.2	\$355.00	\$71.00
4/25/2015	Jonathan Manes	Review government's papers in opposition to MSJ and in support of MtD/cross-motion MSJ.	0.8	\$355.00	\$284.00
4/28/2015	Jonathan Manes	Review sealed Perdue Declaration filed by the government in opposition to MSJ and in support of Mtd/cross-motion for MSJ.	0.3	\$355.00	\$106.50
4/29/2015	Jonathan Manes	Telephone call with client to discuss recent Government filings, and participate in team meeting to review and discuss redactions to sealed filing.	2.0	\$355.00	\$710.00
4/30/2015	Jonathan Manes	Review email correspondence with opposing counsel re: proposed redactions to public version of sealed government filing	0.1	\$355.00	\$35.50
5/1/2015	Jonathan Manes	Participate in telephone conference with opposing counsel re: redactions to public version of sealed government filing	0.7	\$355.00	\$248.50
5/5/2015	Jonathan Manes	Participate in telephone conference with opposing counsel re: redactions to sealed government filing.	0.5	\$355.00	\$177.50
5/7/2015	Jonathan Manes	Email correspondence with opposing counsel re: further extension of deadline to produce publicly-available version of sealed government filing.	0.1	\$355.00	\$35.50
5/13/2015	Jonathan Manes	Email correspondence with opposing counsel re: proposed unredacted version of sealed government filing	0.2	\$355.00	\$71.00
5/13/2015	Jonathan Manes	Reviewing memo of Amanda Lynch describing and analyzing redacted material in sealed government filing; email correspondence to team re: same.	0.4	\$355.00	\$142.00
5/14/2015	Jonathan Manes	Telephone conversation with client.	0.3	\$355.00	\$106.50
5/14/2015	Jonathan Manes	Email correspondence with opposing counsel re: filing unredacted version of sealed document.	0.1	\$355.00	\$35.50
5/14/2015	Jonathan Manes	Reviewing and edit the government's proposed cover letter to be filed on the docket, accompanying public version of sealed document.	0.3	\$355.00	\$106.50
5/19/2015	Jonathan Manes	Outline Reply brief in support of SJ/Opposition to cross-motion for SJ	0.3	\$355.00	\$106.50
5/20/2015	Jonathan Manes	Outline Reply brief in support of SJ/Opposition to cross-motion for SJ	1.5	\$355.00	\$532.50
5/21/2015	Jonathan Manes	Outline Reply brief in support of SJ/Opposition to cross-motion for SJ; circulate to team for comment	3.0	\$355.00	\$1,065.00
5/22/2015	Jonathan Manes	Participate in telephone conference with team re: reply brief.	0.2	\$355.00	\$71.00
5/30/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment argument	1.4	\$355.00	\$497.00
5/31/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment argument	1.1	\$355.00	\$390.50

5/31/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment argument	1.6	\$355.00	\$568.00
5/31/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment argument	0.8	\$355.00	\$284.00
5/31/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment argument	1.1	\$355.00	\$390.50
6/1/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment/prior disclosure argument	1.6	\$355.00	\$568.00
6/1/2015	Jonathan Manes	Drafting Reply and Opposition brief on MSJ: First Amendment/prior disclosure argument	0.6	\$355.00	\$213.00
6/1/2015	Jonathan Manes	Draft Reply and Opposition brief on MSJ: statutory argument	0.8	\$355.00	\$284.00
6/4/2015	Jonathan Manes	Draft preliminary statement for Reply/Opposition brief on MSJ.	0.5	\$355.00	\$177.50
6/4/2015	Jonathan Manes	Review and analyze provisions of USA Freedom Act amending NSL statute's	0.8	\$355.00	\$284.00
6/6/2015	Jonathan Manes	Draft Reply/Opposition brief section re: First Amendment and prelim statement	3.3	\$355.00	\$1,171.50
6/7/2015	Jonathan Manes	Draft Reply/Opposition brief section re: First Amendment and prelim statement	2.5	\$355.00	\$887.50
6/8/2015	Jonathan Manes	Revise Reply/Opposition brief section arguing for expiration of gag/periodic review of necessity of gag	1.1	\$355.00	\$390.50
6/8/2015	Jonathan Manes	Revise Reply/Opposition brief to incorporate USA Freedom Act Amendments	0.6	\$355.00	\$213.00
6/9/2015	Jonathan Manes	Revise reply/opposition brief Prelim Statement; prior disclosure section; statutory argument; argument re: periodic review.	3.5	\$355.00	\$1,242.50
6/9/2015	Jonathan Manes	Revise reply/opposition brief to incorporate suggestions of co-counsel; edit to streamline and shorten arguments.	1.1	\$355.00	\$390.50
6/9/2015	Jonathan Manes	Send draft Reply/Opposition brief to client and co-counsel for review.	0.1	\$355.00	\$35.50
6/9/2015	Jonathan Manes	Arrange for filing under seal by paralegal in NYC	0.2	\$355.00	\$71.00
6/10/2015	Jonathan Manes	Revise and draft Local Rule 56.1(b) statement responding to government factual declaration.	3.5	\$355.00	\$1,242.50
6/11/2015	Jonathan Manes	Finalizing Reply/Opposition brief to incorporate further comments from team; editing to reduce length to page limit; proofreading/cite-checking.	5.5	\$355.00	\$1,952.50
6/12/2015	Jonathan Manes	Submitting courtesy copies of reply/opposition brief to the Court; drafting cover letter to accompany same. Email correspondence with opposing counsel re: filing.	0.5	\$355.00	\$177.50
6/17/2015	Jonathan Manes	Email correspondence with opposing counsel re: redactions to sealed reply/opposition brief.	0.1	\$355.00	\$35.50
6/24/2015	Jonathan Manes	Email correspondence with opposing counsel re: extension to gov't time to reply	0.1	\$355.00	\$35.50
6/24/2015	Jonathan Manes	Email correspondence with opposing counsel re: extension to gov't time to reply	0.1	\$355.00	\$35.50
6/25/2015	Jonathan Manes	Review FBI's proposed redactions to public version of plaintiff's reply/opposition, filed under seal.	0.6	\$355.00	\$213.00

6/25/2015	Jonathan Manes	Telephone call with opposing counsel re: proposed redactions to public version of plaintiff's reply/opposition, filed under seal	0.2	\$355.00	\$71.00
6/26/2015	Jonathan Manes	Email correspondence with opposing counsel re: final redactions to public version of plaintiff's reply/opposing, and public filing of same.	0.2	\$355.00	\$71.00
6/26/2015	Jonathan Manes	E-Filing public version of plaintiff's reply/opposition papers.	0.2	\$355.00	\$71.00
7/15/2015	Jonathan Manes	Email correspondence with opposing counsel re: further extension of time to reply.	0.1	\$355.00	\$35.50
7/15/2015	Jonathan Manes	Email correspondence with client re: government's requested extension of time to reply.	0.2	\$355.00	\$71.00
7/29/2015	Jonathan Manes	Email correspondence with opposing counsel re: government's request for page extension on reply brief	0.1	\$355.00	\$35.50
7/31/2015	Jonathan Manes	Email correspondence with opposing counsel re: filing unredacted reply brief on the public docket in the first instance. Review of sealing order to ensure compliance.	0.2	\$355.00	\$71.00
7/31/2015	Jonathan Manes	Review government reply brief.	0.7	\$355.00	\$248.50
8/31/2015	Jonathan Manes	Telephone call with Judge Marrero's clerk re: court's decision; review process to ensure it contains no classified material; process for releasing redacted version of opinion to the parties.	0.1	\$355.00	\$35.50
8/31/2015	Jonathan Manes	Email correspondence with team and client re: telephone conversation with Judge Marrero's clerk.	0.3	\$355.00	\$106.50
9/10/2015	Jonathan Manes	Review Court's Decision and Order granting plaintiff's motion for summary judgment, and staying enforcement of the judgment	1.3	\$355.00	\$461.50
9/10/2015	Jonathan Manes	Email correspondence with client re: Court's Decision and Order	0.2	\$355.00	\$71.00
9/14/2015	Jonathan Manes	Review redacted version of Court's Decision and Order, posted on the public docket.	0.5	\$355.00	\$177.50

**TOTALS****107.7****\$38,041.50**

# **EXHIBIT C**

<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
4/16/2014	David A. Schulz	Review and revise complaint	1.4	\$485.00	\$679.00
4/18/2014	David A. Schulz	Review amendments to complaint; telephone conference with J. Jaffer regarding complaint	1.6	\$485.00	\$776.00
2/8/2015	David A. Schulz	Review summary judgment motion outline	1.1	\$500.00	\$550.00
2/8/2015	David A. Schulz	Strategize regarding motion; conference call with AUSA regarding schedule	0.3	\$500.00	\$150.00
3/4/2015	David A. Schulz	Revise draft of mem of law in support of MSJ	2.0	\$500.00	\$1,000.00
3/8/2015	David A. Schulz	Revise draft motion; conference call with co-counsel re strategy and open issues	1.7	\$500.00	\$850.00
3/11/2015	David A. Schulz	Finalize and arrange filing of summary judgment motion under seal.	0.4	\$500.00	\$200.00
5/22/2015	David A. Schulz	Review government papers and confer regarding reply brief	2.5	\$500.00	\$1,250.00
6/12/2015	David A. Schulz	Finalize, and file under seal, reply memo and related materials	1.0	\$500.00	\$500.00
<b>TOTALS</b>			<b>12.0</b>		<b>\$5,955.00</b>

# **EXHIBIT D**

Date	Name	Description	Hours	Rate	Total
5/29/2014	Jana FitzGerald	Edited NSL complaint	1.5	\$150.00	\$225.00
9/23/2014	Nicholas Handler	Memo re: First Amendment time limits on gag orders	3.0	\$150.00	\$450.00
9/24/2014	Matthew Halgren	Legal research re: permanent bans on speech and First Amendment	4.0	\$150.00	\$600.00
9/24/2014	Nicholas Handler	Memo re: First Amendment time limits on gag orders	4.0	\$150.00	\$600.00
9/25/2014	Matthew Halgren	Legal research re: permanent bans on speech and First Amendment	1.5	\$150.00	\$225.00
9/28/2014	Matthew Halgren	Review and revise complaint	1.9	\$150.00	\$285.00
10/1/2014	Nicholas Handler	Legal research on First Amendment claims	2.0	\$150.00	\$300.00
10/4/2014	Nicholas Handler	Legal research on First Amendment claims	2.0	\$150.00	\$300.00
10/6/2014	Nicholas Handler	Drafting outline of First Amendment arguments for SJ	4.0	\$150.00	\$600.00
10/9/2014	Matthew Halgren	Phone call with Client to discuss complaint, other aspects of case	0.4	\$150.00	\$60.00
10/9/2014	Nicholas Handler	Phone call with Client to discuss complaint, other aspects of case	0.4	\$150.00	\$60.00
10/11/2014	Nicholas Handler	Revising outline of First Amendment arguments for SJ.	2.0	\$150.00	\$300.00
10/13/2014	Matthew Halgren	Conduct preliminary research on publicly available information re NSLs	1.5	\$150.00	\$225.00
10/15/2014	Matthew Halgren	Review NSL attachment with J. Manes and discuss research strategy.	0.4	\$150.00	\$60.00
10/16/2014	Nicholas Handler	Completing outline of First Amendment arguments for SJ	2.0	\$150.00	\$300.00
10/22/2014	Matthew Halgren	Conduct fact research to show no good reason for maintaining gag order	1.8	\$150.00	\$270.00
10/24/2014	Nicholas Handler	Revising outline of Summary Judgment brief.	2.0	\$150.00	\$300.00
10/30/2014	Matthew Halgren	Conduct fact research to show no good reason for maintaining gag order.	2.0	\$150.00	\$300.00
10/31/2014	Matthew Halgren	Fact research re: content of NSL attachment.	0.7	\$150.00	\$105.00
11/19/2014	Matthew Halgren	Research and summarize local and judge-specific rules for motions for summary judgment.	2.0	\$150.00	\$300.00
11/20/2014	Matthew Halgren	Draft introduction, procedural history, and facts section for MSJ	4.5	\$150.00	\$675.00
11/20/2014	Matthew Halgren	Review other sections of MSJ brief	1.5	\$150.00	\$225.00
11/22/2014	Matthew Halgren	Review comments provided by J. Manes on summary judgment draft	0.6	\$150.00	\$90.00
11/28/2014	Matthew Halgren	Draft related case statement for filing in SDNY	3.0	\$150.00	\$450.00
12/10/2014	Matthew Halgren	Correspond with Scott Bailey, paralegal, re: filing papers	0.5	\$150.00	\$75.00
12/10/2014	Matthew Halgren	Revise related case statement	1.8	\$150.00	\$270.00
1/6/2015	Amanda Lynch	Memo on filing under seal	2.5	\$150.00	\$375.00
1/28/2015	Matthew Halgren	Draft and circulate by email to team planning memo detailing next steps in the litigation and dividing tasks.	1.5	\$150.00	\$225.00
1/30/2015	Matthew Halgren	Draft and send email to opposing counsel re: case management and potential sealing order.	0.5	\$150.00	\$75.00
2/3/2015	Amanda Lynch	Drafting outline of Merrill Declaration for MSJ	1.5	\$150.00	\$225.00
2/4/2015	Matthew Halgren	Draft and send email to opposing counsel re: case management.	0.1	\$150.00	\$15.00

2/6/2015	Matthew Halgren	Correspond with MFIA team and opposing counsel re: scheduling phone call to discuss sealing order and case management.	0.4	\$150.00	\$60.00
2/6/2015	Matthew Halgren	Draft, revise, and send email to opposing counsel re: case management.	0.2	\$150.00	\$30.00
2/9/2015	Amanda Lynch	Telephone conference with opposing counsel re: case management and sealing order.	0.3	\$150.00	\$45.00
2/9/2015	Amanda Lynch	Draft proposed sealing order to govern filings of material still subject to nondisclosure order.	0.8	\$150.00	\$112.50
2/9/2015	Matthew Halgren	Telephone conference with opposing counsel re: case management and sealing order.	0.3	\$150.00	\$45.00
2/10/2015	Amanda Lynch	Research statutory argument for NSL brief	3.0	\$150.00	\$450.00
2/10/2015	Benjamin Graham	Research on NSL statute history, reviewing previous court cases interpreting statute, in support of MSJ brief	3.0	\$150.00	\$450.00
2/10/2015	Matthew Halgren	Revise preliminary statement in memo of law in support of MSJ in response to comments from J. Manes.	3.0	\$150.00	\$450.00
2/11/2015	Amanda Lynch	Revise proposed order re: sealing of material subject to nondisclosure order	0.8	\$150.00	\$112.50
2/11/2015	Amanda Lynch	Revise Joint Pre-Motion Letter to Judge Marrero	1.0	\$150.00	\$150.00
2/11/2015	Matthew Halgren	Revise statement of facts in memo of law in support of MSJ.	4.0	\$150.00	\$600.00
2/11/2015	Nicholas Handler	Drafting Joint Pre-Motion Letter to Judge Marrero	2.0	\$150.00	\$300.00
2/12/2015	Amanda Lynch	Email proposed order re: sealing to opposing counsel	0.1	\$150.00	\$15.00
2/12/2015	Benjamin Graham	Revising pre-motion letter to Judge Marrero	0.8	\$150.00	\$112.50
2/12/2015	Matthew Halgren	Drafting Local Rule 56.1 Statement of Undisputed Material Facts in support of MSJ	0.2	\$150.00	\$30.00
2/12/2015	Nicholas Handler	Drafting Local Rule 56.1 Statement of Undisputed Material Facts in support of MSJ	2.5	\$150.00	\$375.00
2/12/2015	Nicholas Handler	Drafting Local Rule 56.1 Statement of Undisputed Material Facts in support of MSJ	2.0	\$150.00	\$300.00
2/12/2015	Nicholas Handler	Revising Pre-Motion Letter to Judge Marrero	1.5	\$150.00	\$225.00
2/13/2015	Amanda Lynch	Drafting Merrill Declaration in Support of MSJ	1.5	\$150.00	\$225.00
2/15/2015	Amanda Lynch	Drafting, research and revisions of memo of law in support of MSJ: statutory arguments	4.5	\$150.00	\$675.00
2/15/2015	Amanda Lynch	Reviewing prior decisions in Doe v. Mukasey litigation issued by Judge Marrero.	2.0	\$150.00	\$300.00
2/15/2015	Benjamin Graham	Drafting, research and revisions of memo of law in support of MSJ: statutory arguments	2.5	\$150.00	\$375.00
2/15/2015	Matthew Halgren	Review and revise draft Rule 56.1 Statement of Undisputed Material Facts and Merrill Declaration in Support of MSJ.	0.9	\$150.00	\$135.00
2/16/2015	Benjamin Graham	Reviewing prior decisions in Doe v. Mukasey litigation issued by Judge Marrero.	1.5	\$150.00	\$225.00
2/16/2015	Benjamin Graham	Edits to Rule 56.1 Statement of Undisputed Material Facts	1.3	\$150.00	\$195.00
2/16/2015	Matthew Halgren	Revise preliminary statement and statement of facts in memo of law in support of MSJ	5.0	\$150.00	\$750.00
2/16/2015	Nicholas Handler	Researching additional First Amendment cases for memorandum of law in support of MSJ	2.5	\$150.00	\$375.00



2/17/2015	Matthew Halgren	Revise preliminary statement of memo of law in support of MSJ; provide comments on argument section of same.	4.5	\$150.00	\$675.00
2/17/2015	Nicholas Handler	Revise and edit First Amendment section of mem of law in support of MSJ	3.5	\$150.00	\$525.00
2/18/2015	Matthew Halgren	Finalize draft of pre-motion letter and send to opposing counsel.	0.5	\$150.00	\$75.00
2/19/2015	Matthew Halgren	Review opposing counsel's summary of defendants' arguments for pre-motion letter. Edit and shorten letter to fit on three pages.	2.2	\$150.00	\$330.00
2/19/2015	Matthew Halgren	Review correspondence from opposing counsel re: pre-motion letter; draft and send email to opposing counsel re: same.	0.5	\$150.00	\$75.00
2/19/2015	Nicholas Handler	Revise and edit First Amendment section of mem of law in support of MSJ	2.5	\$150.00	\$375.00
2/20/2015	Amanda Lynch	Revise memo of law in support of MSJ.	1.5	\$150.00	\$225.00
2/20/2015	Matthew Halgren	Draft, revise, and send email to opposing counsel transmitting pre-motion letter.	0.3	\$150.00	\$45.00
2/20/2015	Matthew Halgren	Respond to revisions from J. Manes on pre-motion letter and make additional revisions. Review further revisions from J. Manes. Proofread and finalize letter.	1.7	\$150.00	\$255.00
2/22/2015	Amanda Lynch	Research in support of Merrill Declaration, to be submitted in support of MSJ	2.0	\$150.00	\$300.00
2/22/2015	Amanda Lynch	Revisions to Merrill Declaration in support of MSJ	2.5	\$150.00	\$375.00
2/22/2015	Matthew Halgren	Revise memo of law in support of MSJ.	2.3	\$150.00	\$345.00
2/26/2015	Amanda Lynch	Research re: legislative history of the NSL statute in support of mem of law in support of MSJ	2.0	\$150.00	\$300.00
2/26/2015	Matthew Halgren	Review comments and revise memo of law in support of MSJ.	3.2	\$150.00	\$480.00
2/26/2015	Nicholas Handler	Review comments and revise First Amemdment arguments in mem of law in support of MSJ	3.0	\$150.00	\$450.00
2/27/2015	Nicholas Handler	Revise First Amemdment arguments in mem of law in support of MSJ	4.5	\$150.00	\$675.00
2/28/2015	Amanda Lynch	Research re: legislative history of the NSL statute in support of mem of law in support of MSJ	1.5	\$150.00	\$225.00
2/28/2015	Amanda Lynch	Revise statutory section of brief in support of MSJ	3.0	\$150.00	\$450.00
2/28/2015	Benjamin Graham	Revise MSJ brief section re: statutory arguments	3.5	\$150.00	\$525.00
2/28/2015	Matthew Halgren	Revise memo of law in support of MSJ.	4.8	\$150.00	\$720.00
3/1/2015	Amanda Lynch	Revise Merrill Declaration in Support of MSJ	1.5	\$150.00	\$225.00
3/1/2015	Matthew Halgren	Revise memo of law in support of MSJ.	3.5	\$150.00	\$525.00
3/1/2015	Matthew Halgren	Draft Manes Declaration in Support of MSJ	2.0	\$150.00	\$300.00
3/2/2015	Matthew Halgren	Finish drafting Manes Declaration in Support of MSJ	3.9	\$150.00	\$585.00
3/3/2015	Amanda Lynch	Revise brief in support of MSJ	1.5	\$150.00	\$225.00
3/3/2015	Benjamin Graham	Line edits on MSJ brief	3.2	\$150.00	\$480.00
3/4/2015	Benjamin Graham	Edits to mem of law in support of MSJ, statutory argument	1.3	\$150.00	\$195.00
3/4/2015	Matthew Halgren	Revise memo of law in support of MSJ with particular attention to bringing within page limit.	6.2	\$150.00	\$930.00
3/5/2015	Amanda Lynch	Revise memo of law in support of MSJ.	3.5	\$150.00	\$525.00
3/7/2015	Benjamin Graham	Revise memo of law in support of MSJ.	2.1	\$150.00	\$315.00
3/8/2015	Matthew Halgren	Revise memo of law in support of MSJ.	3.9	\$150.00	\$585.00

3/8/2015	Matthew Halgren	Review and respond to revisions and comments re: Manes Declaration in Support of MSJ	1.6	\$150.00	\$240.00
3/9/2015	Amanda Lynch	Pre-Motion telephone conference with the Court and discussion with team before/after.	0.8	\$150.00	\$120.00
3/9/2015	Amanda Lynch	Revise SUMF to include correct citations to underlying declarations and exhibits	3.0	\$150.00	\$450.00
3/9/2015	Benjamin Graham	Pre-Motion telephone conference with the Court and discussion with team before/after.	0.8	\$150.00	\$120.00
3/9/2015	Benjamin Graham	Drafting Notice of Motion	1.5	\$150.00	\$225.00
3/9/2015	Benjamin Graham	Edits to Rule 56.1 Statement of Undisputed Material Facts	0.8	\$150.00	\$112.50
3/9/2015	Matthew Halgren	Pre-Motion telephone conference with the Court and discussion with team before/after.	0.8	\$150.00	\$120.00
3/9/2015	Nicholas Handler	Pre-Motion telephone conference with the Court and discussion with team before/after.	0.8	\$150.00	\$120.00
3/10/2015	Amanda Lynch	Finalize brief, exhibits, motion, Rule 56.1 Statement for filing under seal	4.0	\$150.00	\$600.00
3/10/2015	Benjamin Graham	Proofing Manes affidavit	1.0	\$150.00	\$150.00
3/10/2015	Benjamin Graham	Final line edits of all filings	3.5	\$150.00	\$525.00
3/10/2015	Matthew Halgren	Revise memo of law in support of MSJ with particular attention to adding and fixing citations.	3.4	\$150.00	\$510.00
3/17/2015	Matthew Halgren	Draft, revise, and send email to opposing counsel re: extension of time to file public version of MSJ documents; correspond with team re: same.	1.0	\$150.00	\$150.00
3/20/2015	Amanda Lynch	Edit redacted filings for e-filing on the public docket	0.5	\$150.00	\$75.00
3/20/2015	Matthew Halgren	Review and comment on proposed government redactions to MSJ papers.	0.6	\$150.00	\$90.00
3/24/2015	Matthew Halgren	Draft, revise, and send email to opposing counsel re: redactions in MSJ papers.	0.4	\$150.00	\$60.00
3/24/2015	Matthew Halgren	Draft and send email to team re: postponing meeting.	0.2	\$150.00	\$30.00
4/4/2015	Matthew Halgren	Correspond with team re: briefing schedule.	0.1	\$150.00	\$15.00
4/24/2015	Matthew Halgren	Review government's papers in opposition to MSJ and in support of MtD/cross-motion MSJ.	1.0	\$150.00	\$150.00
4/25/2015	Benjamin Graham	Review government's papers in opposition to MSJ and in support of MtD/cross-motion MSJ.	1.3	\$150.00	\$187.50
4/27/2015	Matthew Halgren	Send email to client containing updates on case and transmitting government's opposition papers.	0.4	\$150.00	\$60.00
4/29/2015	Amanda Lynch	Telephone call with client to discuss recent Government filings, and participate in team meeting to review and discuss redactions to sealed filing.	2.0	\$150.00	\$300.00
4/29/2015	Amanda Lynch	Prepare for meeting re: redactions.	1.5	\$150.00	\$225.00
4/29/2015	Benjamin Graham	Telephone call with client to discuss recent Government filings, and participate in team meeting to review and discuss redactions to sealed filing.	2.0	\$150.00	\$300.00
4/29/2015	Matthew Halgren	Draft and send email to client transmitting and explaining Perdue Declaration and soliciting client's feedback re: redactions to same. Address problems arising from attempts to email large files.	0.7	\$150.00	\$105.00
4/29/2015	Matthew Halgren	Telephone call with client to discuss recent Government filings, and participate in team meeting to review and discuss redactions to sealed filing.	2.0	\$150.00	\$300.00

4/30/2015	Amanda Lynch	Draft and fax letter seeking extension of court deadline for submitting proposed redactions.	1.5	\$150.00	\$225.00
4/30/2015	Matthew Halgren	Send emails to opposing counsel re: proposed redactions to Perdue Declaration, and to schedule call re: same.	0.3	\$150.00	\$45.00
5/1/2015	Benjamin Graham	Preparation for call with opposing counsel on redactions	0.5	\$150.00	\$75.00
5/1/2015	Amanda Lynch	Participate in telephone conference with opposing counsel re: redactions to public version of sealed government filing	0.7	\$150.00	\$105.00
5/1/2015	Benjamin Graham	Participate in telephone conference with opposing counsel re: redactions to public version of sealed government filing	0.7	\$150.00	\$105.00
5/1/2015	Matthew Halgren	Participate in telephone conference with opposing counsel re: redactions to public version of sealed government filing	0.7	\$150.00	\$105.00
5/1/2015	Matthew Halgren	Draft and send update email to client.	0.7	\$150.00	\$105.00
5/2/2015	Matthew Halgren	Correspond with client re: redactions to Perdue Declaration.	0.2	\$150.00	\$30.00
5/5/2015	Amanda Lynch	Participate in telephone conference with opposing counsel re: redactions to Perdue Declaration.	0.5	\$150.00	\$75.00
5/5/2015	Matthew Halgren	Participate in telephone conference with opposing counsel re: redactions to Perdue Declaration.	0.5	\$150.00	\$75.00
5/5/2015	Matthew Halgren	Participate in telephone conference with client re: redactions to Perdue Declaration.	0.2	\$150.00	\$30.00
5/13/2015	Amanda Lynch	Draft memo summarizing redactions to sealed government filing	1.5	\$150.00	\$225.00
5/19/2015	Amanda Lynch	Research and draft memo summarizing alternate sources of the information contained in the NSL attachment, in support of argument in opposition/reply that there is no good reason for gag.	6.0	\$150.00	\$900.00
5/20/2015	Amanda Lynch	Research and draft memo summarizing alternate sources of the information contained in the NSL attachment, in support of argument in opposition/reply that there is no good reason for gag.	6.0	\$150.00	\$900.00
5/20/2015	Amanda Lynch	Research and draft memo summarizing alternate sources of the information contained in the NSL attachment, in support of argument in opposition/reply that there is no good reason for gag.	3.0	\$150.00	\$450.00
5/22/2015	Amanda Lynch	Participate in telephone conference with team re: reply brief.	0.2	\$150.00	\$30.00
5/22/2015	Amanda Lynch	Research and draft memo summarizing alternate sources of the information contained in the NSL attachment, in support of argument in opposition/reply that there is no good reason for gag.	3.0	\$150.00	\$450.00
5/22/2015	Matthew Halgren	Participate in telephone conference with team re: reply brief.	0.2	\$150.00	\$30.00
5/22/2015	Matthew Halgren	Review outline for reply brief.	0.3	\$150.00	\$45.00
6/3/2015	Amanda Lynch	Draft Local Rule 56.1(b) statement responding to government's factual declaration.	1.0	\$150.00	\$150.00
6/6/2015	Amanda Lynch	Draft and edit Local Rule 56.1(b) statement responding to government's factual declaration.	1.5	\$150.00	\$225.00

6/7/2015	Amanda Lynch	Review current draft of reply brief and draft Section IV of reply brief re: expiration of gag.	6.5	\$150.00	\$975.00
<b>TOTAL</b>			<b>258.0</b>		<b>\$38,692.50</b>