

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RICHARD A. HORN, Suite 1800 )  
3838 N. Causeway Blvd. )  
3 Lakeway Center, Metairie, LA 70002 )  
Plaintiff, )

vs. )

WARREN CHRISTOPHER, in his official )  
capacity as the Secretary of the Department )  
of State, Main State Department )  
Bldg., 2201 C St. N.W., Washington, )  
D.C. 20520; JOHN M. DEUTCH in his )  
official capacity as the Director of the )  
Central Intelligence Agency; CIA, )  
Washington, D.C. 20505; ADMIRAL )  
J.M. McCONNELL in his official capacity )  
as the Director of the National Security )  
Agency and Chief, Central Security )  
Service, National Security Agency, )  
Fort George G. Meade, Maryland )  
20755-6000 )  
Defendants. )

CIVIL ACTION NO.  
CLASS ACTION COMPLAINT;  
JURY DEMAND

CASE NUMBER 1:96CV02120

JUDGE: Harold H. Greene

DECK TYPE: Civil General

DATE STAMP: 09/12/96

**JURY  
ACTION**

I

NATURE OF ACTION

1. Plaintiff Richard A. Horn (Horn) is a Special Agent with the Drug Enforcement Administration (DEA) and brings this action on his own behalf, and on behalf of all currently employed DEA Special Agents, Diversion Investigators, Intelligence Analysts and all other DEA employees who have been, presently are, or in the future may be stationed in foreign posts for the DEA. This action seeks declaratory, injunctive and equitable relief to address a pattern and practice of unconstitutional and unlawful electronic eavesdropping and electronic

surveillance conducted by employees, agents, and/or private contractors of the Department of State (DOS), Central Intelligence Agency (CIA), and National Security Agency (NSA) against DEA agents and employees and their families, (hereinafter DEA agents) assigned to foreign posts of duty.

2. Defendants implemented a pattern of policies, procedures, and practices, both past and present, to surreptitiously eavesdrop on conversations of DEA agents while they are in their respective DEA offices in foreign countries, and/or while in their government-leased quarters (GLQ) or safe houses (private places where DEA Agents would meet with informants or others to carry out their duties) in foreign countries. The information illegally gathered through the unlawful interception of these conversations was and is then further unlawfully disseminated to other government agents and agencies. Plaintiff, on his own behalf, and on behalf of all similarly situated DEA agents, seeks equitable relief, including but not limited to a declaratory judgment that said policies, procedures, and practices are unlawful and/or unconstitutional, and an injunction directing the Defendants to cease and desist from, and remedy, their illegal conduct.

## II

### JURISDICTION AND VENUE

3. The rights which Plaintiff seeks to vindicate and protect on his own behalf and on behalf of the class arise under Fourth Amendment of the United States Constitution, statutes (50 U.S.C. § § 1809 et seq and 18 U.S.C. § § 2510 et seq), Executive Order (#12333) and regulations. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and for declaratory and injunctive relief pursuant to 28 USC § § 2201 and 2202. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

III

PARTIES

4. Plaintiff Horn is an American citizen and has been employed by the Drug Enforcement Administration as a Special Agent since June, 1971. Plaintiff Horn has been assigned to the field as a Special Agent in Portland, Oregon; Fresno, California; and has served DEA in management capacities in Islamabad, Pakistan; Des Moines, Iowa; Rangoon, Burma; and most recently in New Orleans, Louisiana. While stationed in Rangoon, Burma from June, 1992 through September 8, 1993, Plaintiff Horn's office was located in the American Embassy in Rangoon, Burma. During this time Plaintiff lived at 92 Inya Road, a residence located near the Embassy which was leased by the U.S. Government. Special Agent Horn was the DEA Country Attaché while stationed in Burma. Plaintiff Horn seeks the opportunity to finish his career with DEA in a foreign post and might accept such an assignment if the acts of the Defendants alleged herein are enjoined and the DEA Career Board concurs.

5. Horn's DEA office was located in the U.S. Embassy in Rangoon, Burma. In addition, one or more of Defendant agencies had offices, officials, and agents located in the Embassy. (Plaintiff and Defendants all know which Defendants had offices in Burma, but it is not being revealed in this Complaint because of U.S. Government threats to Plaintiff and his counsel not to disclose these details.)

6. Horn violated no U.S. laws during his tenure in Burma nor did the Defendants have probable cause to believe that he did so. U.S. President Executive Order No. 12333 sets forth specific procedures for the Defendant agencies to follow in order to conduct lawful surveillance abroad once the Defendant agencies can establish "probable cause".

7. Defendants Warren Christopher, John M. Deutch, and Admiral J.M. McConnell are sued in their official capacity as Secretary of State, and Directors of the CIA and NSA, respectively, all of whom have agents and persons working under their control and supervision in foreign countries and at American Embassies and Consulates where many Special Agents of the DEA are assigned. Defendants know where they have personnel stationed, but it is not divulged here for the reasons stated in paragraph 5 above.

IV

CLASS ACTION ALLEGATIONS

8. This is a class action pursuant to Federal Rules of Civil Procedure, Rule, 23(b)(2).

9. This action is properly maintained as a class action under Rule 23(a) because: (a) the class includes hundreds of DEA Special Agents and employees, making joinder of all members impractical; (b) the claims alleged on behalf of the class raise questions of law and fact common to the class; (c) the claims of the Plaintiff representative are typical of the claims of the class; and (d) the Plaintiff, as class representative, and his counsel, will adequately and fairly represent and protect the interests of the class. DEA agents and employees currently serving the U.S. Government overseas are not likely to file a claim on their own behalf because (a) they may not know of the secretive, unlawful eavesdropping activities of the Defendants; (b) if they knew of said secretive conduct they would probably be afraid to report it or to file a complaint themselves because they are in a foreign country and because of possible retaliation by the Defendant Agencies, and (c) they may feel they would not receive support from "DEA".

10. This action is properly maintainable as a class action under Rule 23(b)(2) because the Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

11. Plaintiff requests that the Court certify a class that consists of the named Plaintiff and "all present, future, and former Special Agents of DEA and employees who have in the past served as DEA Special Agents or employees in foreign posts of duty, all current Special Agents of DEA and employees who are serving in foreign posts of DEA, and all DEA agents and employees who in the future will be assigned by DEA to foreign posts ("the DEA foreign post class Plaintiffs").

12. The claims set forth below are typical of the claims of the DEA foreign post class Plaintiffs.

13. The named Plaintiff Horn is an adequate representative of the class.

V

#### STATEMENT OF FACTS

14. Special Agent Horn was in charge of the DEA post in Rangoon, Burma from June, 1992 through September 8, 1993. On or about August 12, 1993 at approximately 11:00 pm, Special Agent Horn's telephone call from his GLQ to another DEA agent at his GLQ was intercepted. The exact contents of that interception were subsequently transmitted in an official teletype by the State Department Chargé Franklin "Pancho" Huddle (the Chargé in Burma) to various persons identified by name and to their respective DOS sections in Washington, D.C., and perhaps to yet other persons unknown to Special Agent Horn. Special

Agent Horn's conversation was intercepted and disseminated without his knowledge or his consent. The surveillance was not conducted with "probable cause" and was intercepted not in accordance with Executive Order No. 12333 and was therefore in violation of Executive Order No. 12333 and the Fourth Amendment. The interception of Horn's conversation was accomplished through a concerted effort by the Department of State, the CIA, and the NSA. When later stationed in New Orleans as a Group Supervisor for DEA, Special Agent Horn acquired reliable information that it was a pattern and practice of the three Defendant agencies to intercept conversations that DEA agents and others had either from their GLQ's in foreign posts, or from DEA offices at American Embassies, and Consulates and other locations at foreign posts. This pattern and practice was not isolated to this one incident in Rangoon, Burma, nor was it isolated to Special Agent Horn, nor was it isolated to the country of Burma, but instead, it was a pattern and practice of the three Defendant agencies to conduct such activity in other foreign posts wherein DEA has offices. The technology used by these three agencies and how they intercepted these conversations has been learned by Agent Horn, but are not described specifically in this Complaint as a result of threats to Special Agent Horn and his counsel, the undersigned, that disclosure of these "sources and methods" information could subject Agent Horn and/or his counsel to criminal prosecution because the three Defendant agencies and Department of Justice deem said information undiscloseable by law because they allege the information is classified -- an allegation Plaintiff disputes, as it does not involve national security. As a result of this threat, specifics of how the interception occurred are not described herein, but have been described by Plaintiff Horn to appropriate government officials.

15. Plaintiff Horn has learned from other DEA agents and employees about other instances in the past when one or more of the Defendant agencies have knowingly and unlawfully intercepted DEA agent conversations from DEA offices in foreign posts, and from DEA agents and family members in the DEA agents' GLQ's (all of whom are U.S. citizens), for example: (a) between at least 1987-1990 in Santo Domingo, Dominican Republic, one or more of the Defendant agencies unlawfully intercepted a DEA Special Agent's telephone conversation; (b) in September of 1994 one or more of the Defendant agencies unlawfully intercepted a DEA Special Agent's international telephone call from the DEA office in the American Embassy in Bangkok, Thailand; (c) a DEA Special Agent's telephone conversations from the American Embassy and his GLQ in Guatemala City, Guatemala in 1984 and 1985 were unlawfully intercepted by one or more of the Defendant agencies; (d) from and including 1987-1989 in Guatemala City, Guatemala DEA Special Agents' telephone conversations from their office in the American Embassy and their GLQ's were unlawfully intercepted by one or more of the Defendant agencies; (e) in May of 1993 in Bangkok, Thailand, a DEA Special Agent's telephone conversation was intercepted by one or more of the Defendant agencies; and (f) in April of 1987 the telephone conversation of the wife of a DEA Agent speaking from the GLQ she shared with her family was intercepted by one or more of the Defendant agencies, and several months later one of the Defendant agencies requested the DEA Agent sign an authorization allowing the intelligence agencies to eavesdrop upon telephone conversations. Much more detail is known by the named Plaintiff, but is not being revealed herein because of government threats set forth in paragraphs 5 and 14 above. Plaintiff alleges upon information and belief that the contents of these illegal intercepts were disclosed by the Defendant agencies to others in violation of the law.

16. Special Agent Horn and all of the DEA foreign post class Plaintiffs allege that it is a pattern and practice of these three Defendant agencies to unlawfully intercept and disclose conversations of DEA agents, other DEA employees, and family members at and from DEA agent offices, and their GLQ's and other locations at foreign posts, on a worldwide basis, and that this pattern and practice has existed for many years, and continues to be done by the three Defendant agencies against DEA Special Agents, employees, and family members serving in foreign posts, and will likely be continued in the future.

VI

DECLARATORY AND INJUNCTIVE RELIEF; VIOLATION OF  
THE FOURTH AMENDMENT, VARIOUS STATUTES AND EXECUTIVE ORDER

17. Plaintiff incorporates by reference as though fully set forth, all of the allegations contained in paragraphs 1 through 16, above.

18. Plaintiff, on behalf of himself, and all of the DEA foreign post class Plaintiffs, alleges that the Defendants' conduct in the eavesdropping upon, interception of and/or dissemination of information derived from the eavesdropping upon or interception of telephone or oral communications of DEA agents and/or their spouses and families serving overseas violates the Plaintiff's and the class Plaintiffs' rights guaranteed under the Fourth Amendment of the United States Constitution. Plaintiff understands that Defendants claim that the alleged activities described herein do not occur, but if they did, DEA agents do not have Fourth Amendment rights when stationed in foreign posts. Plaintiffs also contend the conduct by the Defendants described above violates the Foreign Intelligence Surveillance Act, 50 U.S.C. § § 1809 et seq, Title 3 of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510 et seq, and violates Executive



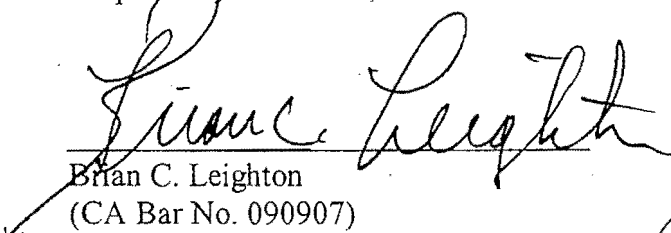
Order No. 12333 (codified at 50 U.S.C. § 401). Plaintiff understands that Defendants deny that any of these laws or Executive Orders are applicable to their alleged conduct.

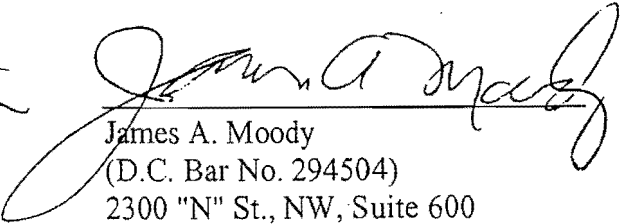
19. Defendants' conduct is an ongoing pattern and practice. Plaintiffs are therefore entitled to declaratory and injunctive relief, declaring that the monitoring, surveillance, and interception of, and the dissemination of information gathered from the monitoring and interception of communications by DEA agents serving in foreign posts, whether it be at American Embassy offices of DEA, or DEA agents GLQ's or their private residences, and safe houses violates Plaintiffs' Fourth Amendment rights, statutory rights, and Executive Order rights, and injunctive relief, enjoining the Defendants, their agents, employees or independent contractors from violating in the future the Fourth Amendment, statutory, and executive order rights of the Plaintiffs.

20. Plaintiffs are also entitled to attorneys' fees under the Equal Access to Justice Act, or any other attorney fee provision.

Respectfully Submitted,

DATED: September 11, 1996

  
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