

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON

BRANDON MAYFIELD, et. al.,)	
)	Civil Action No. CV06-305 AA
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	
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BRANDON MAYFIELD, et. al.,)	
)	Civil Action No. CV04-1427 AA
Plaintiffs,)	
)	
v.)	
)	
ALBERTO R. GONZALES, et al.,)	
)	
Defendants.)	
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STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE

It is hereby stipulated by and between the undersigned plaintiffs and defendants, by and through their respective attorneys, as follows:

1. Except as specifically provided in paragraph 8 below, the United States of America agrees, in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature for monetary, injunctive, declaratory, or any other form of relief,

arising directly or indirectly from or by reason of any and all injury or damage of any kind (including but not limited to bodily and personal injury (including emotional injury), death, injury to or loss of property, the consequences of any such injury, death, or loss, and attorney's fees or other legal costs), whether known or unknown and whether foreseen or unforeseen, resulting or to result from, or relating to, the subject matter of the above-captioned actions, that plaintiffs or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire, against the United States of America, its agents, servants, employees, and contractors, or any other person or entity, to:

- a. pay the sums of \$1,900,000.00 to Brandon Mayfield, \$25,000.00 to Mona Mayfield, \$25,000.00 to Shane Mayfield, \$25,000.00 to Sharia Mayfield, and \$25,000.00 to Samir Mayfield, said entire Two Million Dollars (\$2,000,000.00) to be paid as described in paragraph 3 below;
- b. destroy the FISA take, as defined in paragraph 4 below;
- c. return the copies of the material witness materials to the plaintiffs, as defined in paragraph 5 below; and
- d. apologize to the plaintiffs, as spelled out in Attachment 3 hereto.

2. Except as specifically provided in paragraph 8 below, the plaintiffs and their guardians, heirs, executors, administrators, and assigns, and each of them, agree to release, reimburse, indemnify, and hold harmless the United States of America, its agents, servants, employees, and contractors (including but not limited to Alberto R. Gonzales, John Ashcroft, Richard K. Werder, Terry Green, Michael Wieners, Eduardo Sanchez, and John T. Massey) from and against any liability or further or future litigation or pursuit by any of the plaintiffs, their

guardians, heirs, executors, administrators, or assigns of any claim encompassed by paragraph 1 above against any person or entity; and the defendants and their guardians, heirs, executors, administrators, and assigns, and each of them, agree to release, reimburse, indemnify, and hold harmless the plaintiffs from and against any liability or further or future litigation or pursuit by any of the defendants, their guardians, heirs, executors, administrators, or assigns of any claim encompassed by paragraph 1 above against the plaintiffs or any of them.

3. Payment of the Two Million Dollars referenced in paragraph 1.a. above will be made by one government wire transfer to the trust account of plaintiffs' attorney Gerry Spence. Plaintiffs' attorneys agree to obtain a dismissal of the above-captioned actions with prejudice (including any appellate proceedings pending in either such action, and including appeal No. 04-30432 (9th Cir.) in the material witness proceeding, *In re: Federal Grand Jury* 03-01, Misc. No. 04-MC-9071 (D. Or.)), except as specifically provided in paragraph 8 below, with each party bearing its own fees, costs, and expenses.

4. The term "the FISA take," as referenced in paragraph 1.b. above, is defined for purposes of this Stipulation for Compromise Settlement and Release as the communications intercepts that were acquired by the FBI pursuant to the FISA electronic surveillance authority targeting Brandon Mayfield and the materials that were seized or reproduced by the FBI pursuant to the FISA physical search authority targeting Brandon Mayfield. Any materials, in whatever form or place, derived directly or indirectly from or related to the FISA take as defined herein that are not included within the above definition of such term shall be known as "derivative FISA materials." The government's obligation under paragraph 1.b. above does not extend to derivative FISA materials.

5. The term “the copies of the material witness materials,” as referenced in paragraph 1.c. above, is defined for purposes of this Stipulation for Compromise Settlement and Release as the copies, retained by the government pursuant to the Order of September 20, 2004 of the Honorable Judge Jones of this Court after the originals had been returned to the plaintiffs, of the materials seized pursuant to search warrants issued by the U.S. District Court for the District of Oregon in May 2004 in *In re: Federal Grand Jury* 03-01, Misc. No. 04-MC-9071, No. 04-MC-9070 (A)-(F), and No. 04-MC-9072 relating to the plaintiffs, except that such term does not include the classified National Defense Document that was seized pursuant to such search warrants. The plaintiffs agree that Elden M. Rosenthal, counsel for the plaintiffs, will retain the copies of the material witness materials for three years following the date on which this Stipulation for Compromise Settlement and Release is approved by this Court, and that Mr. Rosenthal will make such copies available in response to a request from an appropriate authority in connection with an official investigation or proceeding.

6. This Stipulation for Compromise Settlement and Release is not, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, employees, or contractors. This settlement is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

7. It is agreed by and among the parties that each party will bear his, her, or its own costs, fees, and expenses and that any attorney’s fees owed by the plaintiffs will be paid out of the settlement amount and not in addition thereto.

8. As indicated in paragraph 2 above, the parties agree that there is one specific claim that is not resolved as part of this settlement. As part of this Stipulation for Compromise Settlement

and Release, the United States agrees not to oppose the filing of the plaintiffs' Proposed Amended Complaint (Attachment 1 hereto), and as part of this Court's approval of this Stipulation for Compromise Settlement and Release (as described further in paragraph 11 below), this Court grants leave for the plaintiffs to file such Amended Complaint. The parties agree that the sole claim that is not released as part of this settlement and that is at issue in such Amended Complaint is the plaintiffs' claim that 50 U.S.C. 1804 (relating to electronic surveillance under the Foreign Intelligence Surveillance Act) and 50 U.S.C. 1823 (relating to physical searches under such Act) violate the Fourth Amendment on their face, and the parties agree that the sole relief that will be awarded should the plaintiffs prevail on such claim is a declaratory judgment that one or both of such provisions is in violation of the Fourth Amendment and that, if such a declaratory judgment is entered with respect to one or both of such provisions and becomes final and not subject to further judicial review, the United States shall not use such provision(s) with respect to the plaintiffs. The parties further agree that this claim will be litigated based solely on the Amended Complaint, the parties' Recitation of Stipulated Facts (Attachment 2 hereto), and memoranda of law, and that no answer to the Amended Complaint will be filed; no discovery, evidentiary hearing, or other factual proceedings of any kind will occur at any stage; and the plaintiffs' complaint will not be further amended. The parties further agree that the United States reserves the right to raise any and all defenses and arguments, including but not limited to lack of jurisdiction, in opposition to such claim, and that the United States does not necessarily agree with the allegations of the Amended Complaint, but that the United States stipulates, for purposes of this litigation only, to the facts recited in the Recitation of Stipulated Facts.

9. The persons signing this Stipulation for Compromise Settlement and Release warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. As to the plaintiffs who are minors, the plaintiffs must obtain court approval of the settlement at their expense. The plaintiffs agree to obtain such approval in a timely manner, time being of the essence. In the event the plaintiffs fail or are unable to obtain such court approval, this Stipulation for Compromise Settlement and Release is null and void. Plaintiffs further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner.

10. The parties agree that this Stipulation for Compromise Settlement and Release, including all attachments, may be made public in its entirety, and the plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

11. The parties' agreement is conditioned upon this Court's approval of all terms of this Stipulation for Compromise Settlement and Release, including all attachments. If this Court does not approve all terms of this Stipulation for Compromise Settlement and Release, including all attachments, this Stipulation for Compromise Settlement and Release is null and void.

12. It is contemplated that this Stipulation for Compromise Settlement and Release may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, will be deemed to be one document.

Executed this ____ day of _____, 2006.

APPROVED AS TO FORM:

THE SPENCE LAW FIRM LLC

BRANDON MAYFIELD, Plaintiff

GERRY SPENCE, of Attorneys
for Plaintiffs

Executed this ____ day of _____, 2006.

MONA MAYFIELD, Plaintiff

ROSENTHAL & GREENE, P.C.

Elden M. Rosenthal, of Attorneys
for Plaintiffs

Executed this ____ day of _____, 2006.

MONA MAYFIELD, as guardian
ad litem for SHANE MAYFIELD,
Plaintiff

MICHELE LONGO EDER, LLC

Michele Longo Eder, of Attorneys
for Plaintiffs

Executed this ____ day of _____, 2006.

MONA MAYFIELD, as guardian
ad litem for SHARIA MAYFIELD,
Plaintiff

Executed this ____ day of _____, 2006.

MONA MAYFIELD, as guardian
ad litem for SAMIR MAYFIELD,
Plaintiff

Executed this ____ day of _____, 2006.

ELIZABETH J. SHAPIRO
Attorney for Defendants
UNITED STATES OF AMERICA,
FEDERAL BUREAU OF INVESTIGATION,
DEPARTMENT OF JUSTICE, and ALBERTO GONZALES

Executed this ____ day of _____, 2006.

RICHARD K. WERDER, Defendant

Executed this ____ day of _____, 2006.

TERRY GREEN, Defendant

Executed this ____ day of _____, 2006.

MICHAEL WIENERS, Defendant

Executed this ____ day of _____, 2006.

EDUARDO SANCHEZ, Defendant

Executed this ____ day of _____, 2006.

APPROVED AS TO FORM:

GREENSPUN, DAVIS & LEARY, P.C

JOHN T. MASSEY, Defendant

Christie A. Leary, of Attorneys for
Defendant Massey

APPROVED this ____ day of _____, 2006:

THE HONORABLE ANN L. AIKEN
United States District Judge