

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL)
LIBERTIES UNION FOUNDATION; AMERICAN CIVIL LIBERTIES)
UNION OF MICHIGAN; COUNCIL ON AMERICAN- ISLAMIC)
RELATIONS; COUNCIL ON AMERICAN-ISLAMIC RELATIONS)
OF MICHIGAN; GREENPEACE, INCORPORATED; NATIONAL)
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; JAMES)
BAMFORD; LARRY DIAMOND; CHRISTOPHER HITCHENS;)
TARA McKELVEY; BARNETT R. RUBIN,)

Plaintiffs - Appellees (No. 06-2095))
Cross - Appellants (No. 06-2140))

v.)

O R D E R

NATIONAL SECURITY AGENCY/CENTRAL SECURITY)
SERVICE; KEITH B. ALEXANDER, General, in his official capacity)
as Director of the National Security Agency and Chief of the Central)
Security Service,)

Defendants - Appellants (No. 06-2095))
Cross - Appellees (No. 06-2140))

BEFORE: BATCHELDER, GILMAN, and GIBBONS, Circuit Judges

The government moves for a stay pending appeal of the district court’s order holding the Terrorist Surveillance Program unconstitutional and permanently enjoining the Government from utilizing the Program “in any way, including, but not limited to, conducting warrantless wiretaps of telephone and internet communications, in contravention of [FISA and Title III].”

In considering whether a stay pending appeal should issue, we balance the traditional factors governing injunctive relief: (1) whether the applicant has demonstrated a substantial likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other interested parties; and (4) where the public interest lies. *Baker v. Adams County/Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002);

Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). This court, in *Grutter v. Bollinger*, 247 F.3d 631, 633 (6th Cir. 2001), noted that

Michigan Coalition said that the success on the merits which must be demonstrated is inversely proportional to the harm. More than a possibility of success must be shown, and “even if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the nonmoving party if a stay is granted, he is still required to show, at a minimum, ‘serious questions going to the merits.’” (edits and citations omitted).

After careful review, we conclude that this standard has been met in this case. Accordingly, the motion for a stay pending appeal is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk