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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 FIRST UNITARIAN CHURCH OF LOS)
20 ANGELES; ACORN ACTIVE MEDIA; BILL OF)
RIGHTS DEFENSE COMMITTEE; CALGUNS)
21 FOUNDATION, INC.; CALIFORNIA)
ASSOCIATION OF FEDERAL FIREARMS)
22 LICENSEES, INC.; CHARITY AND SECURITY)
NETWORK; COUNCIL ON AMERICAN)
23 ISLAMIC RELATIONS-CALIFORNIA;)
COUNCIL ON AMERICAN ISLAMIC)
24 RELATIONS-OHIO; COUNCIL ON)
AMERICAN ISLAMIC RELATIONS-)
25 FOUNDATION, INC.; FRANKLIN ARMORY;)
FREE PRESS; FREE SOFTWARE)
26 FOUNDATION; GREENPEACE, INC.; HUMAN)
RIGHTS WATCH; MEDIA ALLIANCE;)
27 NATIONAL LAWYERS GUILD; NATIONAL)
28

Case No: 4:13-cv-03287 JSW

**SECOND AMENDED COMPLAINT
FOR CONSTITUTIONAL AND
STATUTORY VIOLATIONS,
SEEKING DECLARATORY AND
INJUNCTIVE RELIEF**

Hon. Jeffrey S. White
Courtroom 5 - 2nd Floor

DEMAND FOR JURY TRIAL

1 ORGANIZATION FOR THE REFORM OF)
 2 MARIJUANA LAWS, CALIFORNIA CHAPTER;))
 3 PATIENT PRIVACY RIGHTS; PEOPLE FOR)
 4 THE AMERICAN WAY; PUBLIC)
 5 KNOWLEDGE; SHALOM CENTER;)
 6 STUDENTS FOR SENSIBLE DRUG POLICY;)
 7 TECHFREEDOM; and UNITARIAN)
 8 UNIVERSALIST SERVICE COMMITTEE,)
 9)
 10 Plaintiffs,)
 11 v.)
 12)
 13 NATIONAL SECURITY AGENCY and)
 14 ADMIRAL MICHAEL S. ROGERS, its Director,)
 15 in his official and individual capacities; the)
 16 UNITED STATES OF AMERICA;)
 17 DEPARTMENT OF JUSTICE and ERIC H.)
 18 HOLDER, its Attorney General, in his official and)
 19 individual capacities; Acting Assistant Attorney)
 20 General for National Security JOHN P. CARLIN,)
 21 in his official and individual capacities; FEDERAL)
 22 BUREAU OF INVESTIGATION and JAMES B.)
 23 COMEY, its Director, in his official and individual)
 24 capacities; JAMES R. CLAPPER, Director of)
 25 National Intelligence, in his official and individual)
 26 capacities, and DOES 1-100,)
 27)
 28 Defendants.)

1 support, and organizational database development for a diverse array of groups, individuals, and
2 organizations from around the globe. Acorn members have supported democracy advocates and
3 independent media outlets worldwide, often working directly with communities laboring under
4 hostile and oppressive regimes. Plaintiff Acorn brings this action on behalf of itself and its adversely
5 affected volunteers and members.

6 20. Plaintiff Bill of Rights Defense Committee (BORDC) is a non-profit, advocacy
7 organization based in Northhampton, Massachusetts. BORDC supports an ideologically, politically,
8 ethnically, geographically, and generationally diverse grassroots movement focused on educating
9 Americans about the erosion of fundamental freedoms; increasing civic participation; and converting
10 concern and outrage into political action. BORDC brings this action on behalf of itself and its
11 adversely affected staff.

12 21. Plaintiff Calguns Foundation, Inc. (CGF) is a non-profit, membership organization
13 based in San Carlos, California. CGF works to support the California firearms community by
14 promoting education for all stakeholders about California and federal firearm laws, rights, and
15 privileges, and defending and protecting the civil rights of California gun owners. In particular, CGF
16 operates a hotline for those with legal questions about gun rights in California. Plaintiff CGF brings
17 this action on behalf of itself and on behalf of its adversely affected members and staff.

18 22. Plaintiff California Association of Federal Firearms Licensees, Inc. (CAL-FFL) is a
19 non-profit, industry association of, by, and for firearms manufacturers, dealers, collectors, training
20 professionals, shooting ranges, and others, advancing the interests of its members and the general
21 public through strategic litigation, legislative efforts, and education. CAL-FFL expends financial and
22 other resources in both litigation and non-litigation projects to protect the interests of its members
23 and the public at large. CAL-FFL brings this action on behalf of itself and its adversely affected
24 members and staff.

25 23. Plaintiff Charity and Security Network's mission is to protect civil society's ability to
26 carry out peacebuilding projects, humanitarian aid, and development work effectively and in a
27 manner consistent with human rights principles and democratic values. To accomplish this, the
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1 Network focuses on: coordinating advocacy by bringing together stakeholders from across the
2 nonprofit sector with policymakers to support needed changes in U.S. national security rules; and
3 raising awareness, dispelling myths and promoting awareness of the positive contribution civil
4 society makes to human security. CSN brings this action on behalf of itself and its adversely affected
5 membership and staff.

6 24. Plaintiffs Council on American Islamic Relations – California (CAIR-CA), Council on
7 American Islamic Relations-Ohio (CAIR-OHIO), and Council on American Islamic Relations-
8 Foundation, Inc. (CAIR-F) are non-profit, advocacy organization with offices in California, Ohio,
9 and Washington, D.C., respectively. CAIR-CA, CAIR-OHIO, and CAIR-F’s missions are to
10 enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American
11 Muslims, and build coalitions that promote justice and mutual understanding. CAIR-CA, CAIR-
12 OHIO, and CAIR-F bring this action on behalf of themselves and their adversely affected staffs.

13 25. Plaintiff Franklin Armory, a wholly owned subsidiary of CBE, Inc., is a state and
14 federally licensed manufacturer of firearms located in Morgan Hill, California. Franklin Armory
15 specializes in engineering and building products for restrictive firearms markets, such as California.
16 Franklin Armory is a member of CAL-FFL. Franklin Armory brings this suit on its own behalf.

17 26. Plaintiff Free Press is a non-profit, advocacy organization based in Washington, D.C.
18 Free Press’s mission is to build a nationwide movement to change media and technology policies,
19 promote the public interest, and strengthen democracy by advocating for universal and affordable
20 Internet access, diverse media ownership, vibrant public media, and quality journalism. Free Press
21 brings this action on behalf of itself and its adversely affected members and staff.

22 27. Plaintiff the Free Software Foundation (FSF) is a non-profit, membership organization
23 based in Boston, Massachusetts. FSF helped pioneer a worldwide free software movement and
24 provides an umbrella of legal and technical infrastructure for collaborative software development
25 internationally. FSF brings this action on behalf of itself and its adversely affected members and
26 staff.

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1 28. Plaintiff Greenpeace, Inc. (Greenpeace) is a non-profit, membership organization
2 headquartered in Washington, D.C. Through a domestic and international network of offices and
3 staff, Greenpeace uses research, advocacy, public education, lobbying, and litigation to expose
4 global environmental problems and to promote solutions that are essential to a green and peaceful
5 future. Greenpeace brings this action on behalf of itself and its adversely affected members and staff.

6 29. Plaintiff Human Rights Watch (HRW) is a non-profit, advocacy organization, based in
7 New York, New York. Through its domestic and international network of offices and staff, HRW
8 challenges governments and those in power to end abusive practices and respect international human
9 rights law by enlisting the public and the international community to support the cause of human
10 rights for all. HRW brings this action on behalf of itself and its adversely affected staff.

11 30. Plaintiff Media Alliance is a non-profit, membership organization based in Oakland,
12 California. Media Alliance serves as a resource and advocacy center for media workers, non-profit
13 organizations, and social justice activists to make media accessible, accountable, decentralized,
14 representative of society's diversity, and free from covert or overt government control and corporate
15 dominance. Media Alliance brings this action on behalf of itself and its adversely affected members
16 and staff.

17 31. Plaintiff National Lawyers Guild, Inc. (NLG) is a non-profit corporation formed in
18 1937 as the nation's first racially integrated voluntary bar association. For over seven decades the
19 Guild has represented thousands of Americans critical of government policies, from antiwar,
20 environmental and animal rights activists, to Occupy Wall Street protesters, to individuals accused of
21 computer-related offenses. From 1940-1975 the FBI conducted a campaign of surveillance,
22 investigation and disruption against the Guild and its members, trying unsuccessfully to label it a
23 subversive organization. The NLG brings this action on behalf of itself and its adversely affected
24 membership and staff.

25 32. Plaintiff National Organization for the Reform of Marijuana Laws, California Chapter
26 (NORML, California Chapter) is a non-profit, membership organization located in Berkeley,
27 California. NORML, California Chapter is dedicated to reforming California's marijuana laws and
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1 its mission is to establish the right of adults to use cannabis legally. NORML, California Chapter
2 brings this action on behalf of itself and its adversely affected members and staff.

3 33. Plaintiff Patient Privacy Rights (PPR) is a bipartisan, non-profit organization with
4 12,000 members in all 50 states. It works to give patients control over their own sensitive health
5 information in electronic systems, with the goal of empowering privacy and choices that protect jobs
6 and opportunities and ensure trust in the patient-physician relationship. The lack of privacy of health
7 information causes millions of individuals every year to refuse or delay needed medical treatment or
8 hide information, putting their health at risk. PPR brings this action on behalf of itself and its
9 adversely affected members and volunteers.

10 34. Plaintiff People for the American Way (PFAW) is a non-profit, membership
11 organization based in Washington, D.C. With over 595,000 members, PFAW's primary function is
12 the education of its members, supporters, and the general public as to important issues that impact
13 fundamental civil and constitutional rights and freedoms, including issues concerning civil liberties,
14 government secrecy, improper government censorship, and First Amendment freedoms. PFAW
15 brings this action on behalf of itself and its adversely affected members and staff.

16 35. Plaintiff Public Knowledge is a non-profit, advocacy organization based in
17 Washington, D.C. Public Knowledge is dedicated to preserving the openness of the Internet and the
18 public's access to knowledge, promoting creativity through the balanced application of copyright
19 laws, and upholding and protecting the rights of consumers to use innovative technology lawfully.
20 Public Knowledge brings this action on behalf of itself and its adversely affected staff.

21 36. Plaintiff the Shalom Center seeks to be a prophetic voice in Jewish, multireligious, and
22 American life. It connects the experience and wisdom of the generations forged in the social,
23 political, and spiritual upheavals of the last half-century with the emerging generation of activists,
24 addressing with special concern the planetary climate crisis and the power configurations behind that
25 crisis. The Shalom Center brings this action on behalf of itself and its adversely affected membership
26 and staff.

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1 37. Plaintiff Students for Sensible Drug Policy (SSDP) is a non-profit, membership
2 organization based in Washington, D.C. With over 3,000 members, SSDP is an international,
3 grassroots network of students who are concerned about the impact drug abuse has on our
4 communities, but who also know that the War on Drugs is failing our generation and our society.
5 SSDP creates change by bringing young people together and creating safe spaces for students of all
6 political and ideological stripes to have honest conversations about drugs and drug policy. SSDP
7 brings this action on behalf of itself and its adversely affected membership and staff.

8 38. Plaintiff TechFreedom is a non-profit, think tank based in Washington, D.C.
9 TechFreedom's mission is promoting technology that improves the human condition and expands
10 individual capacity to choose by educating the public, policymakers, and thought leaders about the
11 kinds of public policies that enable technology to flourish. TechFreedom seeks to advance public
12 policy that makes experimentation, entrepreneurship, and investment possible, and thus unleashes
13 the ultimate resource: human ingenuity. TechFreedom brings this action on behalf of itself and its
14 adversely affected staff.

15 39. Plaintiff Unitarian Universalist Service Committee (UUSC) is a non-profit,
16 membership organization based in Cambridge, Massachusetts. UUSC advances human rights and
17 social justice around the world, partnering with those who confront unjust power structures and
18 mobilizing to challenge oppressive policies. Through a combination of advocacy, education, and
19 partnerships with grassroots organizations, UUSC promotes economic rights, advances
20 environmental justice, defends civil liberties, and preserves the rights of people in times of
21 humanitarian crisis. UUSC brings this action on behalf of itself and its adversely affected members
22 and staff.

23 40. All Plaintiffs make and receive telephone calls originating within the United States in
24 furtherance of their mission and operations. In particular, Plaintiffs make and receive telephone calls
25 to and from their members, staffs, and constituents, among other groups and individuals seeking to
26 associate with them, in furtherance of their mission and operations, including advancing their
27 political beliefs, exchanging ideas, and formulating strategy and messages in support of their causes.

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1 41. Each of the Plaintiffs above that is a membership organization and that brings this
2 action on behalf of its members has members whose communications information has been collected
3 as part of the Associational Tracking Program.

4 42. Defendant NSA is an agency under the direction and control of the Department of
5 Defense that seizes, collects, processes, and disseminates signals intelligence. It is responsible for
6 carrying out at least some of the Associational Tracking Program challenged herein.

7 43. Defendant Admiral Michael S. Rogers is the current Director of the NSA, in office
8 since April of 2014. As NSA Director, Admiral Rogers has authority for supervising and
9 implementing all operations and functions of the NSA, including the Associational Tracking
10 Program. Admiral Rogers personally authorizes and supervises the Associational Tracking Program.

11 44. Defendant United States is the United States of America, its departments, agencies,
12 and entities.

13 45. Defendant Department of Justice is a Cabinet-level executive department in the United
14 States government charged with law enforcement, defending the interests of the United States
15 according to the law, and ensuring fair and impartial administration of justice for all Americans.

16 46. Defendant Eric H. Holder is the current Attorney General of the United States, in
17 office since February of 2009. Attorney General Holder personally approves, authorizes, supervises,
18 and participates in the Associational Tracking Program on behalf of the Department of Justice.

19 47. Defendant John B. Carlin is the current Assistant Attorney General for National
20 Security. In that position, defendant Carlin participates in the Department of Justice's
21 implementation of the Associational Tracking Program.

22 48. Defendant Federal Bureau of Investigation (FBI) is a component of the Department of
23 Justice that conducts federal criminal investigation and collects domestic intelligence. FBI is
24 responsible for carrying out at least some of the Associational Tracking Program activities
25 challenged herein.

26 49. Defendant James B. Comey is the current Director of the FBI, in office since
27 September of 2013. As FBI Director, defendant Comey has ultimate authority for supervising and
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1 implementing all operations and functions of the FBI, including its participation in the Associational
2 Tracking Program. Defendant Comey personally authorizes and supervises the FBI's participation in
3 the Associational Tracking Program.

4 50. Defendant Lieutenant General (Ret.) James R. Clapper is the Director of National
5 Intelligence (DNI), in office since August of 2010. Defendant Clapper participates in the activities of
6 the U.S. intelligence community, including the Associational Tracking Program.

7 51. Defendants DOES 1-100 are persons or entities who have authorized or participated in
8 the Associational Tracking Program. Plaintiffs will allege their true names and capacities when
9 ascertained. Upon information and belief each is responsible in some manner for the occurrences
10 herein alleged and the injuries to Plaintiffs herein alleged were proximately caused by the acts or
11 omissions of DOES 1-100 as well as the named Defendants.

12 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

13 **STATUTORY BACKGROUND**

14 52. 50 U.S.C § 1861, the codification of section 215 of the USA PATRIOT Act, as
15 amended, is entitled "Access to certain business records for foreign intelligence and surveillance
16 purposes." Section 1861 provides narrow and limited authority for the Foreign Intelligence
17 Surveillance Court (FISC) to issue orders for the production of "any tangible things (including
18 books, records, papers, documents, and other items) for an investigation to obtain foreign
19 intelligence information not concerning a United States person or to protect against international
20 terrorism or clandestine intelligence activities." The limitations on section 1861 orders include the
21 following:

- 22 • an order may be issued only upon "a statement of facts showing that there are
23 reasonable grounds to believe that the tangible things sought are relevant to an
24 authorized investigation;"
- 25 • the tangible things sought to be produced by an order must be described "with
26 sufficient particularity to permit them to be fairly identified;" and

1 57. DNI Clapper has admitted the Order is authentic, as indicated in Exhibit B, attached
2 hereto and incorporated by this reference.

3 58. The Order is addressed to Verizon Business Network Services Inc., on behalf of MCI
4 Communications Services Inc., d/b/a Verizon Business Services (individually and collectively
5 “Verizon”). Verizon is one of the largest providers of telecommunications services in the United
6 States with over 98 million subscribers. Through its subsidiaries and other affiliated entities that it
7 owns, controls, or provides services to, Verizon provides telecommunications services to the public
8 and to other entities. These subsidiaries and affiliated entities include Verizon Business Global,
9 LLC; MCI Communications Corporation; Verizon Business Network Services, Inc.; MCI
10 Communications Services, Inc.; and Verizon Wireless (Cellco Partnership).

11 **BULK SEIZURE COLLECTION, ACQUISITION, AND STORAGE**

12 59. The Associational Tracking Program seizes, collects and acquires telephone
13 communications information for all telephone calls transiting the networks of all major American
14 telecommunication companies, including Verizon, AT&T, and Sprint.

15 60. The telephone communications information Defendants seize, collect and acquire in
16 bulk as part of the Associational Tracking Program is retained and stored by Defendants in one or
17 more databases. These databases contain call information for all, or the vast majority, of calls wholly
18 within the United States, including local telephone calls, and calls between the United States and
19 abroad, for a period of at least five years. Defendants have indiscriminately obtained and stored the
20 telephone communications information of millions of ordinary Americans, including Plaintiffs, their
21 members, and staffs, as part of the Associational Tracking Program.

22 61. Defendants’ bulk seizure, collection and acquisition of telephone communications
23 information includes, but is not limited to, records indicating who each customer communicates
24 with, at what time, and for how long. The aggregation of this information discloses the expressive,
25 political, social, personal, private, and intimate associational connections among individuals and
26 groups, which ordinarily would not be disclosed to the public or the government.

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1 62. Through the Associational Tracking Program, Defendants have seized, collected,
2 acquired, and retained, and continue to seize, collect, acquire, and retain, bulk communications
3 information of telephone calls made and received by Plaintiffs, their members, and their staffs. This
4 information is otherwise private.

5 63. Because of the Associational Tracking Program, Plaintiffs have lost the ability to
6 assure confidentiality in the fact of their communications to their members and constituent.
7 Plaintiffs' associations and political advocacy efforts, as well as those of their members and staffs,
8 are chilled by the fact that the Associational Tracking Program creates a permanent record of all of
9 Plaintiffs' telephone communications with their members and constituents, among others.

10 64. Plaintiffs' associations and political advocacy efforts, as well as those of their
11 members and staffs, are chilled by Defendants' search and analysis of information obtained through
12 the Associational Tracking Program and Defendants' use and disclose of this information and the
13 results of their searches and analyses.

14 65. Plaintiffs' telephone communications information obtained, retained, and searched
15 pursuant to the Associational Tracking Program was at the time of acquisition, and at all times
16 thereafter, neither relevant to an existing authorized criminal investigation nor to an existing
17 authorized investigation to protect against international terrorism or clandestine intelligence
18 activities.

19 66. Defendants' bulk seizure, collection, acquisition, and retention of the telephone
20 communications information of Plaintiffs, their members, and their staffs is done without lawful
21 authorization, probable cause, and/or individualized suspicion. It is done in violation of statutory and
22 constitutional limitations and in excess of statutory and constitutional authority. Any judicial,
23 administrative, or executive authorization (including any order issued pursuant to the business
24 records provision of 50 U.S.C. § 1861) of the Associational Tracking Program or of the acquisition
25 and retention of the communications information of Plaintiffs, their members, and their staffs is
26 unlawful and invalid.

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1 in direct contact with that target, and any number in contact with a direct contact of the target.
2 Defendants sometimes conduct associational analyses up to three degrees of separation (“three
3 hops”) away.

4 71. The searches include Plaintiffs’ communications information even if plaintiffs are not
5 targets of the government and even if they are not one, two or more “hops” away from a target. All
6 telephone communications information is searched as part of the Associational Tracking Program.

7 72. Plaintiffs’ telephone communications information searched pursuant to the
8 Associational Tracking Program was, at the time of search and at all times thereafter, was neither
9 relevant to an existing authorized criminal investigation nor to an existing authorized investigation to
10 protect against international terrorism or clandestine intelligence activities.

11 73. Defendants’ searching of the telephone communications information of Plaintiffs is
12 done without lawful authorization, probable cause, and/or individualized suspicion. It is done in
13 violation of statutory and constitutional limitations and in excess of statutory and constitutional
14 authority. Any judicial, administrative, or executive authorization (including any business records
15 order issued pursuant 50 U.S.C. § 1861) of the Associational Tracking Program or of the searching
16 of the communications information of Plaintiffs is unlawful and invalid.

17 74. Defendants’ searching of the telephone communications information of Plaintiffs is
18 done (a) without probable cause or reasonable suspicion to believe that Plaintiffs, their members, or
19 their staffs, have committed or are about to commit any crime or engage in any international terrorist
20 activity; (b) without probable cause or reasonable suspicion to believe that Plaintiffs, their members,
21 or their staffs are foreign powers or agents of foreign powers; and (c) without probable cause or
22 reasonable suspicion to believe that Plaintiffs’, their members’, or their staffs’ communications
23 contain or pertain to foreign intelligence information or relate to an investigation to obtain foreign
24 intelligence information.

25 75. Defendants, and each of them, have authorized, approved, supervised, performed,
26 caused, participated in, aided, abetted, counseled, commanded, induced, procured, enabled,
27 contributed to, facilitated, directed, controlled, assisted in, or conspired in the Associational Tracking
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1 Program and in the search or use of the telephone communications information of Plaintiffs, their
2 members, and their staff. Defendants have committed these acts willfully, knowingly, and
3 intentionally. Defendants continue to commit these acts and will continue to do so absent an order of
4 this Court enjoining and restraining them from doing so.

5 **INJURY COMMON TO ALL PLAINTIFFS**

6 76. Each and every Plaintiff is informed and believes that its associational activities have
7 been harmed since the existence of the Associational Tracking Program became publicly known.
8 Each Plaintiff has experienced a decrease in communications from members and constituents who
9 had desired the fact of their communication to Plaintiff to remain secret, especially from the
10 government and its various agencies, or has heard employees, members or associates express
11 concerns about the confidentiality of the fact of their communications with Plaintiffs. Those
12 Plaintiffs who operate hotlines have observed a decrease in calls to the hotlines and/or an increase in
13 callers expressing concern about the confidentiality of the fact of their communications. Since the
14 disclosure of the Associational Tracking Program, Plaintiffs have lost the ability to assure their
15 members and constituents, as well as all others who seek to communicate with them, that the fact of
16 their communications to Plaintiffs will be kept confidential, especially from the federal government,
17 including its various agencies. This injury stems not from the disclosure of the Associational
18 Tracking Program, but from the existence and operation of the program itself. Before the public
19 disclosure of the program, Plaintiffs' assurances of confidentiality were illusory.

20 77. For instance, these specific Plaintiffs experienced the following:

21 (a) Plaintiff First Unitarian has a proud history of working for justice and
22 protecting people in jeopardy for expressing their political views. In the 1950s, it resisted the
23 McCarthy hysteria and supported blacklisted Hollywood writers and actors, and fought California's
24 'loyalty oaths' all the way to the Supreme Court. And in the 1980s, it gave sanctuary to refugees from
25 civil wars in Central America. The principles of its faith often require the church to take bold stands
26 on controversial issues. Church members and neighbors who come to the church for help should not
27 fear that their participation in the church might have consequences for themselves or their families.

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1 This spying makes people afraid to belong to the church community.

2 (b) Plaintiff Calguns Foundation runs a hotline for that allows the general public
3 to call to ask questions about California's byzantine firearms laws. It has members who would be
4 very worried about having their calls taped and stored by NSA/FBI when they're enquiring about
5 whether firearms and parts they possess are felonious in California. It has a phone number
6 specifically so people or their loved ones can call from jail because Californians are often arrested
7 for actually innocent possession or use of firearms.

8 (c) Plaintiff NLG notes that much of its work involves cases (some high profile)
9 involving individuals who have been charged with aiding terrorism or who have been monitored by
10 the FBI and Joint Terrorism Task Forces for their political activism. Knowledge that its email and
11 telephonic communications may likely be monitored has resulted in restricting what its employees
12 and members say over the telephone and in email about legal advocacy and work related to NLG
13 litigation or legal defense committees. In several instances, it has had to convene in-person meetings
14 to discuss sensitive matters. One example is its "Green Scare" hotline for individuals contacted by
15 the FBI, either as targets or in relation to environmental or animal rights cases. NLG immediately
16 advises Hotline callers that the line may not be secure, asks limited information before referring
17 callers to specific NLG attorneys in their geographic area, and does not keep notes or records of the
18 calls. One foundation funder asks for records of Hotline calls, but in response the NLG can only send
19 general examples of the types of calls it receives.

20 (d) Plaintiff Human Rights Watch conducts research and advocacy such that its
21 effectiveness and credibility depend heavily on being able to interview those with direct knowledge
22 of human rights abuses, be they victims, witnesses, perpetrators, or knowledgeable bystanders such
23 as government officials, humanitarian agencies, lawyers and other civil society partners. Because
24 this type of research and reporting can endanger people and organizations, our stakeholders—
25 including even our researchers and/or consultants--often require us to keep their identities or other
26 identifying information confidential. HRW has staff in these offices who talk to the above-
27 mentioned types of stakeholders by telephone to conduct research. HRW is concerned that many of
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1 these stakeholders will have heightened concerns about contacting us through our offices now that
2 we are aware the NSA is logging metadata of these calls. This impairs HRW's research ability
3 and/or causes HRW to rely more on face-to-face encounters or other costly means of holding secure
4 conversations.

5 (e) Plaintiff Shalom Center's Executive Director, Rabbi Arthur Waskow, was
6 subjected to COINTELPRO activity (warrantless searches, theft, forgery) by the FBI between 1968
7 and 1974. He took part in a suit against the FBI and the Washington DC police (*Hobson v. Wilson*)
8 for deprivation of the "right of the people peaceably to assemble." Rabbi Waskow won in DC
9 Federal District Court and the part of the suit that focused on the FBI was upheld in the DC Circuit
10 Court of Appeals. The result of this experience is that he has been very troubled and frightened by
11 the revelations of warrantless mass searches of telephone and Internet communications by the NSA.
12 For several weeks, as the revelations continued, Rabbi Waskow realized the likelihood that the
13 organization he leads, the Shalom Center, and he were under illegitimate surveillance and —
14 because of its involvement in legal and nonviolent opposition to US government policy in several
15 fields — possibly worse. This realization made him rethink whether he wanted to continue in sharp
16 prophetic criticism and action in regard to disastrous public policies. Rabbi Waskow had trouble
17 sleeping, delayed some essays and blogs he had been considering, and worried whether his actions
18 might make trouble for nonpolitical relatives. Rabbi Waskow certainly felt a chill fall across his
19 work of peaceable assembly, association, petition, and the free exercise of his religious convictions.

20 **COUNT I**

21 **Violation of First Amendment—Declaratory, Injunctive, and Other Equitable Relief** 22 **(Against All Defendants)**

23 78. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding
24 paragraphs of this complaint, as if set forth fully herein.

25 79. Plaintiffs, their members, and their staffs use telephone calls to communicate and to
26 associate within their organization, with their members and with others, including to communicate
27 anonymously and to associate privately.
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1 80. By their acts alleged herein, Defendants have violated and are violating the First
2 Amendment free speech and free association rights of Plaintiffs, their members, and their staffs,
3 including the right to communicate anonymously, the right to associate privately, and the right to
4 engage in political advocacy free from government interference.

5 81. By their acts alleged herein, Defendants have chilled and/or threaten to chill the legal
6 associations and speech of Plaintiffs, their members, and their staffs by, among other things,
7 compelling the disclosure of their political and other associations, and eliminating Plaintiffs' ability
8 to assure members and constituents that the fact of their communications with them will be kept
9 confidential.

10 82. Defendants are irreparably harming Plaintiffs, their members, and their staffs by
11 violating their First Amendment rights. Plaintiffs have no adequate remedy at law for Defendants'
12 continuing unlawful conduct, and Defendants will continue to violate Plaintiffs' legal rights unless
13 enjoined and restrained by this Court.

14 83. Plaintiffs seek that this Court declare that Defendants have violated the First
15 Amendment rights of Plaintiffs, their members, and their staffs; enjoin Defendants, their agents,
16 successors, and assigns, and all those in active concert and participation with them from violating the
17 First Amendment to the United States Constitution; and award such other and further equitable relief
18 as is proper.

19 **COUNT II**

20 **Violation of Fourth Amendment—Declaratory, Injunctive, and Equitable Relief**
21 **(Against All Defendants)**

22 84. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1
23 through 77 of this complaint, as if set forth fully herein.

24 85. Plaintiffs have a reasonable expectation of privacy in their telephone communications,
25 including in their telephone communications information.

26 86. By the acts alleged herein, Defendants have violated Plaintiffs' reasonable
27 expectations of privacy and denied Plaintiffs their right to be free from unreasonable searches and
28 seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, including,

1 but not limited to, obtaining *per se* unreasonable general warrants. Defendants have further violated
2 Plaintiffs' rights by failing to apply to a court for, and for a court to issue, a warrant prior to any
3 search and seizure as guaranteed by the Fourth Amendment.

4 87. Defendants are now engaging in and will continue to engage in the above-described
5 violations of Plaintiffs' constitutional rights, and are thereby irreparably harming Plaintiffs. Plaintiffs
6 have no adequate remedy at law for Defendants' continuing unlawful conduct, and Defendants will
7 continue to violate Plaintiffs' legal rights unless enjoined and restrained by this Court.

8 88. Plaintiffs seek that this Court declare that Defendants have violated their Fourth
9 Amendment rights; enjoin Defendants, their agents, successors, and assigns, and all those in active
10 concert and participation with them from violating the Plaintiffs' rights under the Fourth
11 Amendment to the United States Constitution; and award such other and further equitable relief as is
12 proper.

13 **COUNT III**

14 **Violation of Fifth Amendment—Declaratory, Injunctive, and Equitable Relief** 15 **(Against All Defendants)**

16 89. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1
17 through 77 of this complaint, as if set forth fully herein.

18 90. Plaintiffs, their members, and their staffs have an informational privacy interest in
19 their telephone communications information, which reveals sensitive information about their
20 personal, political, and religious activities and which Plaintiffs do not ordinarily disclose to the
21 public or the government. This privacy interest is protected by state and federal laws relating to
22 privacy of communications records and the substantive and procedural right to due process
23 guaranteed by the Fifth Amendment.

24 91. Defendants through their Associational Tracking Program secretly seize, collect,
25 acquire, retain, search, and use the bulk telephone communications information of Plaintiffs, their
26 members, and their staff without providing notice to them, or process by which they could seek
27 redress. Defendants provide no process adequate to protect their interests.
28

1 92. Defendants seize, collect, acquire, retain, search, and use the bulk telephone
2 communications information of Plaintiffs, their members, and their staff without making any
3 showing of any individualized suspicion, probable cause, or other governmental interest sufficient or
4 narrowly tailored to justify the invasion of Plaintiffs' due process right to informational privacy.

5 93. Defendants seize, and acquire the bulk telephone communications information of
6 Plaintiffs, their members, and their staff under, *inter alia*, section 215 of the USA-PATRIOT Act (50
7 U.S.C. § 1861).

8 94. On information and belief, Defendants' information seizure, collection and acquisition
9 activities rely on a secret legal interpretation of 50 U.S.C. § 1861 under which bulk telephone
10 communications information of persons generally is as a matter of law deemed a "tangible thing"
11 "relevant" to "an investigation to obtain foreign intelligence information not concerning a United
12 States person or to protect against international terrorism or clandestine intelligence activities," even
13 without any particular reason to believe that telephone communications information is a "tangible
14 thing" or that the telephone communications information of any particular person, including
15 Plaintiffs, their members, and their staff, is relevant to an investigation to obtain foreign intelligence
16 information not concerning a U.S. person or to protect against international terrorism or clandestine
17 intelligence activities.

18 95. This legal interpretation of 50 U.S.C. § 1861 is not available to the general public,
19 including Plaintiffs, their members, and their staff, leaving them and all other persons uncertain
20 about where a reasonable expectation of privacy from government intrusion begins and ends and
21 specifically what conduct may subject them to electronic surveillance.

22 96. This secret legal interpretation of 50 U.S.C. § 1861, together with provisions of the
23 FISA statutory scheme that insulate legal interpretations from public disclosure and adversarial
24 process, fails to establish minimal guidelines to govern law enforcement and/or intelligence seizure
25 and collection.

26 97. The secret legal interpretation of 50 U.S.C. § 1861 used in the Associational Tracking
27 Program and related surveillance programs causes section 1861 to be unconstitutionally vague in
28

1 violation of the Fifth Amendment and the rule of law. The statute on its face gives no notice that it
2 could be construed to authorize the bulk seizure and collection of telephone communications
3 information for use in future investigations that do not yet exist.

4 98. By these and the other acts alleged herein, Defendants have violated and are
5 continuing to violate the right to due process under the Fifth Amendment of Plaintiffs, their
6 members, and their staff.

7 99. By the acts alleged herein, Defendants' conduct proximately caused harm to Plaintiffs.

8 100. On information and belief, Defendants are now engaging in and will continue to
9 engage in the above-described violations of Plaintiffs' constitutional rights, and are thereby
10 irreparably harming Plaintiffs. Plaintiffs have no adequate remedy at law for Defendants' continuing
11 unlawful conduct, and Defendants will continue to violate Plaintiffs' legal rights unless enjoined and
12 restrained by this Court.

13 101. Plaintiffs seek that this Court declare that Defendants have violated their due process
14 rights under the Fifth Amendment to the United States Constitution; enjoin Defendants, their agents,
15 successors, and assigns, and all those in active concert and participation with them from violating the
16 Plaintiffs' due process rights; and award such other and further equitable relief as is proper.

17 **COUNT IV**

18 **Violation of 50 U.S.C. § 1861—Declaratory, Injunctive and Other Equitable Relief**
19 **(Against All Defendants)**

20 102. Plaintiffs repeat and incorporate herein by reference the allegations in paragraph 1
21 through 77 of this complaint, as if set forth fully herein.

22 103. The business records order provision set forth in 50 U.S.C. § 1861 limits Defendants'
23 ability to seek telephone communications information. It does not permit the suspicionless bulk
24 seizure and collection of telephone communications information unconnected to any ongoing
25 investigation. It does not permit an order requiring the production of intangible things, including
26 telephone communications information not yet in existence.

27 104. Defendants' Associational Tracking Program and the seizure, collection, acquisition,
28 retention, searching, and use of the telephone communications records of Plaintiffs, their members,

1 and their staff exceed the conduct that may be lawfully authorized by an order issued under 50 U.S.C.
2 § 1861.

3 105. By the acts alleged herein, Defendants are acting in excess of their statutory authority
4 and in violation of the express statutory limitations and procedures Congress has imposed on them in
5 50 U.S.C. § 1861.

6 106. Sovereign immunity for this claim is waived by 5 U.S.C. § 702.

7 107. Defendants are now engaging in and will continue to engage in the above-described
8 acts in excess of Defendants' statutory authority and in violation of statutory limitations and
9 procedures of 50 U.S.C. § 1861 and are thereby irreparably harming Plaintiffs. Plaintiffs have no
10 adequate remedy at law for Defendants' continuing unlawful conduct, and Defendants will continue
11 to violate Plaintiffs' legal rights unless enjoined and restrained by this Court.

12 108. Plaintiffs seek that this Court declare that Defendants have acted in excess of
13 Defendants' statutory authority and in violation of statutory limitations and procedures of 50 U.S.C.
14 § 1861; declare that Defendants have thereby irreparably harmed and will continue to irreparably
15 harm Plaintiffs; enjoin Defendants, their agents, successors, and assigns, and all those in active
16 concert and participation with them from acting in excess of Defendants' statutory authority and in
17 violation of statutory limitations and procedures of 50 U.S.C. § 1861; and award such other and
18 further equitable relief as is proper.

19 **COUNT V**

20 **Violation of 18 U.S.C. § 2703, actionable under 18 U.S.C. § 2712—Damages**
21 **(Against Defendant United States)**

22 109. Plaintiffs repeat and incorporate herein by reference the allegations in paragraph 1
23 through 77 of this complaint, as if set forth fully herein.

24 110. Defendant United States has willfully required telecommunications companies to
25 disclose telephone communications information of Plaintiffs, their members, and their staff without
26 meeting any of the requirements listed in 18 U.S.C. § 2703(c)(1), which lists the exclusive means by
27 which a government entity may require such disclosure. Defendant United States has willfully
28 required the telecommunications companies to disclose telephone communications information of

1 Plaintiffs, their members, and their staff without the lawful consent of Plaintiff organizations, their
2 members, and their staffs, without obtaining a warrant issued using the procedures described in the
3 Federal Rules of Criminal Procedure by a court of competent jurisdiction, without using an
4 administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or
5 trial subpoena, and without obtaining a court order, pursuant to 18 U.S.C. § 2703(d), for disclosure
6 from a court of competent jurisdiction which requires, before issuing the order, that Defendants offer
7 specific and articulable facts showing that there are reasonable grounds to believe that the records
8 sought are relevant and material to an ongoing criminal investigation. In requiring these disclosures,
9 any procedures employed pursuant to 50 U.S.C. § 1861 do not meet the exclusive requirements of 18
10 U.S.C. § 2703(c)(1).

11 111. Defendant United States continues to willfully require telecommunications companies
12 to disclose telephone communications information of Plaintiffs, their members, and their staff
13 without meeting any of the exclusive requirements listed in 18 U.S.C. § 2703(c)(1).

14 112. The telecommunication companies making these disclosures are providers of
15 electronic communications service and/or are providers of remote computing service, as defined by
16 18 U.S.C. §§ 2510 and 2711.

17 113. Sovereign immunity for this claim is waived by 18 U.S.C. § 2712. Plaintiffs have
18 complied fully with the claim presentment procedure of 18 U.S.C. § 2712. Pursuant to 18 U.S.C. §
19 2712, Plaintiffs seek from Defendant United States for each Plaintiff their statutory damages or
20 actual damages, and such other and further relief as is proper.

21 **COUNT VI**

22 **Motion For Return Of Unlawfully Searched And Seized Property Pursuant To** 23 **Federal Rule of Criminal Procedure 41(g)**

24 114. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1
25 through 113 of this complaint, as if set forth fully herein.

26 115. This Court has civil equitable jurisdiction under Federal Rule of Criminal
27 Procedure 41(g) to order the return of illegally searched and seized property.
28

1 116. Defendants, by their Associational Tracking Program and their bulk seizure,
2 collection, acquisition, retention, searching, and use of the telephone communications information of
3 Plaintiffs, have unlawfully searched and seized Plaintiffs' telephone communications information.
4 Plaintiffs are aggrieved by Defendants' unlawful seizure and search of their telephone
5 communications information.

6 117. Plaintiffs seek an order directing the return of their telephone communications
7 information in the possession, custody, or control of Defendants, their agents, successors, and
8 assigns, and all those in active concert and participation with them.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs respectfully request that the Court:

- 11 1. Declare that the Program as alleged herein violates without limitation Plaintiffs'
12 rights under the First, Fourth, and Fifth Amendments to the Constitution; and their
13 statutory rights;
- 14 2. Award to Plaintiffs equitable relief, including without limitation, a preliminary and
15 permanent injunction pursuant to the First, Fourth, and Fifth Amendments to the
16 United States Constitution prohibiting Defendants' continued use of the Program,
17 and a preliminary and permanent injunction pursuant to the First, Fourth, and Fifth
18 Amendments requiring Defendants to provide to Plaintiffs an inventory of their
19 communications, records, or other information that was seized in violation of the
20 First, Fourth, and Fifth Amendments, and further requiring the destruction of all
21 copies of those communications, records, or other information within the possession,
22 custody, or control of Defendants.
- 23 3. Award Plaintiffs their statutory, actual, and punitive damages and litigation costs
24 incurred to the extent permitted by law and according to proof.
- 25 4. Award to Plaintiffs reasonable attorneys' fees and other costs of suit to the extent
26 permitted by law.

1 5. Order the return and destruction of their telephone communications information in
2 the possession, custody, or control of Defendants, their agents, successors, and
3 assigns, and all those in active concert and participation with them.

4 6. Grant such other and further relief as the Court deems just and proper.

5
6 Dated: August 18, 2014

Respectfully submitted,

7
8 s/Cindy Cohn

CINDY COHN

LEE TIEN

KURT OPSAHL

JAMES S. TYRE

MARK RUMOLD

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Counsel for Plaintiffs

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JURY DEMAND

Plaintiffs hereby request a jury trial for all issues triable by jury including, but not limited to, those issues and claims set forth in any amended complaint or consolidated action.

Dated: August 18, 2014

Respectfully submitted,

s/Cindy Cohn
CINDY COHN
LEE TIEN
KURT OPSAHL
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Counsel for Plaintiffs

Exhibit A

Exhibit A

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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION
FOR AN ORDER REQUIRING THE
PRODUCTION OF TANGIBLE THINGS
FROM VERIZON BUSINESS NETWORK SERVICES,
INC. ON BEHALF OF MCI COMMUNICATION
SERVICES, INC. D/B/A VERIZON
BUSINESS SERVICES.

Docket Number: BR

13 - 8 0

SECONDARY ORDER

This Court having found that the Application of the Federal Bureau of Investigation (FBI) for an Order requiring the production of tangible things from **Verizon Business Network Services, Inc. on behalf of MCI Communication Services Inc., d/b/a Verizon Business Services (individually and collectively "Verizon")** satisfies the requirements of 50 U.S.C. § 1861,

IT IS HEREBY ORDERED that, the Custodian of Records shall produce to the National Security Agency (NSA) upon service of this Order, and continue production

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Derived from: Pleadings in the above-captioned docket
Declassify on: 12 April 2038

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on an ongoing daily basis thereafter for the duration of this Order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls. This Order does not require Verizon to produce telephony metadata for communications wholly originating and terminating in foreign countries.

Telephony metadata includes comprehensive communications routing information, including but not limited to session identifying information (*e.g.*, originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer.

IT IS FURTHER ORDERED that no person shall disclose to any other person that the FBI or NSA has sought or obtained tangible things under this Order, other than to: (a) those persons to whom disclosure is necessary to comply with such Order; (b) an attorney to obtain legal advice or assistance with respect to the production of things in response to the Order; or (c) other persons as permitted by the Director of the FBI or the Director's designee. A person to whom disclosure is made pursuant to (a), (b), or (c)

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shall be subject to the nondisclosure requirements applicable to a person to whom an Order is directed in the same manner as such person. Anyone who discloses to a person described in (a), (b), or (c) that the FBI or NSA has sought or obtained tangible things pursuant to this Order shall notify such person of the nondisclosure requirements of this Order. At the request of the Director of the FBI or the designee of the Director, any person making or intending to make a disclosure under (a) or (c) above shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

IT IS FURTHER ORDERED that service of this Order shall be by a method agreed upon by the Custodian of Records of Verizon and the FBI, and if no agreement is reached, service shall be personal.

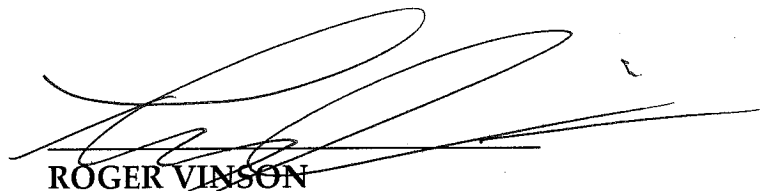
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This authorization requiring the production of certain call detail records or "telephony metadata" created by Verizon expires on the 19th day of July, 2013, at 5:00 p.m., Eastern Time.

Signed _____ Eastern Time
Date Time
 04-25-2013 P02:26



ROGER VINSON
Judge, United States Foreign
Intelligence Surveillance Court

I, Beverly C. Queen, Chief Deputy Clerk, FISC, certify that this document is a true and correct copy of the original. *BK*

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Exhibit B

Exhibit B



DNI Statement on Recent Unauthorized Disclosures of Classified Information

June 6, 2013

DNI Statement on Recent Unauthorized Disclosures of Classified Information

The highest priority of the Intelligence Community is to work within the constraints of law to collect, analyze and understand information related to potential threats to our national security.

The unauthorized disclosure of a top secret U.S. court document threatens potentially long-lasting and irreversible harm to our ability to identify and respond to the many threats facing our nation.

The article omits key information regarding how a classified intelligence collection program is used to prevent terrorist attacks and the numerous safeguards that protect privacy and civil liberties.

I believe it is important for the American people to understand the limits of this targeted counterterrorism program and the principles that govern its use. In order to provide a more thorough understanding of the program, I have directed that certain information related to the "business records" provision of the Foreign Intelligence Surveillance Act be declassified and immediately released to the public.

The following important facts explain the purpose and limitations of the program:

- The judicial order that was disclosed in the press is used to support a sensitive intelligence collection operation, on which members of Congress have been fully and repeatedly briefed. The classified program has been authorized by all three branches of the Government.
- Although this program has been properly classified, the leak of one order, without any context, has created a misleading impression of how it operates. Accordingly, we have determined to declassify certain limited information about this program.
- The program does not allow the Government to listen in on anyone's phone calls. The information acquired does not include the content of any communications or the identity of any subscriber. The only type of information acquired under the Court's order is telephony metadata, such as telephone numbers dialed and length of calls.
- The collection is broad in scope because more narrow collection would limit our ability to



DNI Statement on Recent Unauthorized Disclosures of Classified Information

screen for and identify terrorism-related communications. Acquiring this information allows us to make connections related to terrorist activities over time. The FISA Court specifically approved this method of collection as lawful, subject to stringent restrictions.

- The information acquired has been part of an overall strategy to protect the nation from terrorist threats to the United States, as it may assist counterterrorism personnel to discover whether known or suspected terrorists have been in contact with other persons who may be engaged in terrorist activities.
- There is a robust legal regime in place governing all activities conducted pursuant to the Foreign Intelligence Surveillance Act, which ensures that those activities comply with the Constitution and laws and appropriately protect privacy and civil liberties. The program at issue here is conducted under authority granted by Congress and is authorized by the Foreign Intelligence Surveillance Court (FISC). By statute, the Court is empowered to determine the legality of the program.
- By order of the FISC, the Government is prohibited from indiscriminately sifting through the telephony metadata acquired under the program. All information that is acquired under this program is subject to strict, court-imposed restrictions on review and handling. The court only allows the data to be queried when there is a reasonable suspicion, based on specific facts, that the particular basis for the query is associated with a foreign terrorist organization. Only specially cleared counterterrorism personnel specifically trained in the Court-approved procedures may even access the records.
- All information that is acquired under this order is subject to strict restrictions on handling and is overseen by the Department of Justice and the FISA Court. Only a very small fraction of the records are ever reviewed because the vast majority of the data is not responsive to any terrorism-related query.
- The Court reviews the program approximately every 90 days. DOJ conducts rigorous oversight of the handling of the data received to ensure the applicable restrictions are followed. In addition, DOJ and ODNI regularly review the program implementation to ensure it continues to comply with the law.
- The Patriot Act was signed into law in October 2001 and included authority to compel production of business records and other tangible things relevant to an authorized national security investigation with the approval of the FISC. This provision has subsequently been reauthorized over the course of two Administrations – in 2006 and in 2011. It has been an important investigative tool that has been used over the course of two Administrations, with



DNI Statement on Recent Unauthorized Disclosures of Classified Information

the authorization and oversight of the FISC and the Congress.

Discussing programs like this publicly will have an impact on the behavior of our adversaries and make it more difficult for us to understand their intentions. Surveillance programs like this one are consistently subject to safeguards that are designed to strike the appropriate balance between national security interests and civil liberties and privacy concerns. I believe it is important to address the misleading impression left by the article and to reassure the American people that the Intelligence Community is committed to respecting the civil liberties and privacy of all American citizens.

James R. Clapper, Director of National Intelligence

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