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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 HUMAN RIGHTS WATCH,)
14)
Plaintiff,)
15 v.)
16)
DRUG ENFORCEMENT)
17 ADMINISTRATION and MICHELE)
LEONHART, in her official capacity as its)
18 Administrator; FEDERAL BUREAU OF)
19 INVESTIGATION and JAMES COMEY,)
in his official capacity as its Director; the)
20 DEPARTMENT OF JUSTICE and ERIC)
21 HOLDER in his official capacity as)
Attorney General; DEPARTMENT OF)
22 HOMELAND SECURITY and JEH)
23 JOHNSON, in his official capacity as)
Secretary; the UNITED STATES OF)
24 AMERICA; and DOES 1-100,)
25)
Defendants.)

Case No: 2:15-cv-2573

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 of HRW and its staff as they advocate for human rights. HRW's records are
2 collected, retained, searched, and disseminated without any suspicion of
3 wrongdoing and without any judicial authorization or oversight. These records
4 reveal to the government the network of HRW's associations in the Designated
5 Countries, substantially burdening HRW's ability to engage in its mission of
6 defending and promoting global human rights.
7

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9 6. The Mass Surveillance Program violates the First and Fourth
10 Amendments to the Constitution.

11 **JURISDICTION AND VENUE**
12

13 7. This case arises under the Constitution and laws of the United States
14 and presents a federal question within this Court's jurisdiction under Article III of
15 the Constitution and 28 U.S.C. § 1331. The Court also has jurisdiction under 5
16 U.S.C. § 702 and 28 U.S.C. §§ 2201-2202.
17

18 8. Defendants have sufficient contacts with this district generally and, in
19 particular, with regard to the events herein alleged. Defendants are subject to the
20 exercise of this court's jurisdiction over them.
21

22 9. Venue is proper in this judicial district pursuant to 28 U.S.C.
23 § 1391(e)(1)(B).
24

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PARTIES

1
2 10. Plaintiff HRW is a non-profit, non-partisan international human rights
3 organization, based in New York, New York, with offices in Los Angeles,
4 California. Through its domestic and international network of offices and staff,
5 HRW challenges governments and those in power to end abusive practices and to
6 respect international human rights law by enlisting the public and the international
7 community to support the cause of human rights for all.
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9

10 11. Defendant DEA is a federal law enforcement agency under the
11 direction and control of the Department of Justice. It is charged with enforcement
12 of the Controlled Substances Act. It is the primary agency carrying out the Mass
13 Surveillance Program.
14

15 12. Defendant Michele Leonhart is the Administrator of DEA, in office
16 since November 2007. Administrator Leonhart has ultimate authority over DEA's
17 activities.
18

19 13. Defendant Federal Bureau of Investigation ("FBI") is a federal law
20 enforcement agency under the direction and control of the Department of Justice.
21 FBI searches, uses, disseminates, and retains information obtained through the
22 Mass Surveillance Program. That information remains in FBI data repositories.
23

24 14. Defendant James Comey is the Director of FBI, in office since
25 September 2013. Director Comey has ultimate authority over FBI's activities.
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1 15. Defendant Department of Justice (“DOJ”) is a Cabinet-level executive
2 department in the United States government charged with law enforcement,
3 defending the interests of the United States according to the law, and ensuring fair
4 and impartial administration of justice for all Americans. DEA and FBI are
5 components of DOJ.
6

7 16. Defendant Eric Holder is the Attorney General of the United States, in
8 office since February 2009. Attorney General Holder has ultimate authority over
9 DOJ’s activities and those of its components, DEA and FBI.
10

11 17. Defendant Department of Homeland Security (“DHS”) is a Cabinet-
12 level executive department in the United States government charged with ensuring
13 the security of the nation against terrorism and other hazards. DHS searches, uses,
14 disseminates, and retains information obtained through the Mass Surveillance
15 Program. That information remains in DHS data repositories.
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18 18. Defendant Jeh Johnson is the Secretary of Homeland Security, in
19 office since December 2013. Secretary Johnson has ultimate authority over DHS’s
20 activities.
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22 19. Defendant United States is the United States of America, its
23 departments, agencies, and entities.
24

25 20. Defendants Does 1-100 are persons, officers, officials, or entities who
26 have authorized or participated in the Mass Surveillance Program. Plaintiff will
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1 allege their true names and capacities when ascertained.

2 21. Each Defendant is responsible in some manner for the alleged
3 occurrences, and the injuries to Plaintiff were proximately caused by the acts or
4 omissions of the named Defendants, as well as Does 1-100.
5

6 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

7 **BACKGROUND**

8
9 22. The Mass Surveillance Program is a program of untargeted and
10 suspicionless surveillance of Americans.

11 23. The Program consists of Defendants' bulk collection, retention, search,
12 use, and dissemination of call records for all, or substantially all, telephone calls
13 originating in the United States and terminating in the Designated Countries. The
14 Mass Surveillance Program maintains information about millions of calls made by
15 Americans, including Plaintiff HRW.
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18 24. The information collected as part of the Mass Surveillance Program
19 includes: the initiating telephone number; the receiving telephone number; the
20 date, time, and duration of call; and the method by which the call was billed.
21

22 25. Since at least 2011, DEA has issued subpoenas to American
23 telecommunications service providers, requiring the providers to turn over
24 information in bulk about Americans' calls to the Designated Countries. Call
25 records were obtained without any particularized suspicion of wrongdoing, and the
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1 Program was not subject to any judicial oversight or authorization.

2 26. The Mass Surveillance Program was carried out in secret for years.
3 News reports indicate the Program began as early as the 1990s. Nevertheless, from
4 its inception until January 2015, the Program was never disclosed to the public, nor
5 was it disclosed in any criminal proceedings.
6

7 27. In a January 2015 filing in *United States v. Hassanshahi*, No. 13-CR-
8 274 (RC), (D.D.C), Defendants acknowledged the existence of the Mass
9 Surveillance Program for the first time. It was described in the Declaration of
10 Robert Patterson, a public version of which is attached hereto as Exhibit A
11 (“Patterson Declaration”) and incorporated herein by reference.
12

13 28. According to the Patterson Declaration, Defendants obtained call
14 records for the Mass Surveillance Program under 21 U.S.C. § 876, which
15 authorizes the Attorney General to issue subpoenas for the production of “any
16 records (including books, records, papers, documents, and other tangible things
17 which constitute or contain evidence) which the Attorney General finds relevant or
18 material to [an] investigation [relating to the enforcement of the Controlled
19 Substances Act].”
20

21 29. The Mass Surveillance Program indiscriminately sweeps in call
22 records for calls between the United States and the Designated Countries—
23 countries that are determined to have a “demonstrated nexus to international drug
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1 trafficking and related criminal activities.” Patterson Decl., ¶ 4.

2 30. DEA has acknowledged that Americans’ calls to one country—Iran—
3 are included in the Mass Surveillance Program. Patterson Decl., ¶ 4.
4

5 31. However, the Mass Surveillance Program includes calls made to other
6 countries as well. Pursuant to section 706(1) of the Foreign Relations
7 Authorization Act (P.L. 107-228), 22 U.S.C. § 2291j-1(1), the President is required
8 to annually certify countries that are major drug transit and/or major illicit drug
9 producing countries. Since at least 2010, the President has annually certified the
10 following countries as such: Afghanistan, The Bahamas, Bolivia, Burma,
11 Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras,
12 India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.
13 *See* Presidential Determination on Major Drug Transit or Major Illicit Drug
14 Producing Countries for Fiscal Year 2014, 78 FR 58855, 2013 WL 5325618
15 (Sep. 13, 2013).
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19 32. Each of these countries is a focus of DEA activity. For example, DEA
20 has 11 offices in Mexico alone; two offices in Colombia; and two offices in
21 Ecuador. DEA has at least one office in each of the following countries:
22 Afghanistan, Burma, Costa Rica, Dominican Republic, Guatemala, Haiti,
23 Honduras, India, Jamaica, Laos, Nicaragua, Pakistan, Panama, Peru, and
24 Venezuela.
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1 33. These countries, as well as others, are among the Designated Countries
2 included in the Mass Surveillance Program.

3 34. The telephone communications information Defendants collect through
4 the Mass Surveillance Program is retained and stored by Defendants in one or
5 more databases. These databases contain call information for millions of
6 Americans' calls to the Designated Countries.
7

8 35. These databases are then searched not only by officers and employees
9 of DEA, but by the officers and employees of DHS, FBI, and Does 1-100. For
10 example, in the *Hassanshahi* case, the search of the Program database(s) was not
11 performed by DEA. Instead, Homeland Security Investigations, an investigative
12 arm of DHS, accessed and searched the Program database(s).
13

14 36. Use of the Program database(s) is not limited to investigations of
15 illegal drug trafficking or production. Instead, agencies search the database(s) for
16 any purpose (including, but not limited to, investigatory purposes), regardless of
17 the investigation's connection to illegal drugs. For example, in the *Hassanshahi*
18 case, DHS employees searched the Program database—and used and disseminated
19 information obtained from that search—during an investigation of possible
20 violations of export and trade laws.
21

22 37. According to the Patterson Declaration, the Program was “suspended”
23 in 2013. Further, according to the Patterson Declaration, the Mass Surveillance
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1 Program database is no longer being queried for “investigatory purposes” and
2 “information is no longer being collected in bulk pursuant to 21 U.S.C. § 876.”
3 Patterson Decl., ¶ 6. Defendants continue to use and disseminate information
4 obtained through the Mass Surveillance Program. Defendants have not stated that
5 all information obtained through the Mass Surveillance Program, including HRW’s
6 information, has been purged from Defendants’ systems.
7

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9 38. Additionally, Defendants could resume bulk collection under 21
10 U.S.C. § 876 at any time. Defendants may still be collecting call record
11 information in bulk under other authorities.
12

13 **PLAINTIFF’S ALLEGATIONS**

14 39. Plaintiff HRW is a leading non-profit, non-partisan international
15 human rights organization. HRW’s global advocacy work involves investigating
16 human rights abuses, exposing the facts widely, and pressuring those in power to
17 respect rights and secure justice.
18

19 40. HRW’s expert staff includes country-specialists, lawyers, journalists,
20 advocates, and academics of diverse backgrounds and nationalities. Many of these
21 experts conduct fact-finding missions and investigate human rights abuses,
22 impartially reporting on human rights conditions in some 90 countries around the
23 world.
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26 41. HRW and its staff work regularly on human rights issues in many of
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1 the Designated Countries. Countries that feature illicit drug production or
2 trafficking also often present a range of human rights abuses.

3 42. For example, HRW has dedicated experts monitoring and working to
4 protect human rights in Iran. Those experts document human rights abuses and
5 violations occurring within the country, including complaints concerning arbitrary
6 arrest and detention, torture, and executions.
7

8 43. Further, HRW has experts researching and monitoring each of the
9 following countries identified as major drug transit and/or major illicit drug
10 producing countries: Afghanistan, Colombia, Ecuador, Haiti, Honduras, India,
11 Jamaica, Mexico, Pakistan, Peru, and Venezuela.
12

13 44. Using U.S. telecommunications services, HRW and its staff
14 communicate in the regular course of work with individuals within many of the
15 Designated Countries, including those listed above, to conduct the fact-finding
16 necessary to accurately report on human rights abuses within the countries.
17 Plaintiff's communications with its contacts and associates in these countries,
18 including the mere fact that a communication occurred, are often extraordinarily
19 sensitive.
20

21 45. Using U.S. telecommunications services, HRW and its staff often
22 communicate with victims of, or witnesses to, human rights abuses in many of the
23 Designated Countries. These individuals often fear for their physical safety or their
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1 life, and the mere fact of contacting an international human rights organization,
2 like HRW, can put them in harm's way. Accordingly, the confidentiality of
3 communications for Plaintiff's associates in these countries is often of the utmost
4 concern.
5

6 46. These communications to HRW's network of associates in many of the
7 Designated Countries are made over HRW's Verizon phone lines, from staff
8 members' personal phone lines, and through Internet-based platforms like Google
9 Voice.
10

11 47. Defendants obtained records of HRW's communications to the
12 Designated Countries as part of the Mass Surveillance Program. Those records are
13 searched each time Defendants query the Mass Surveillance Program database(s).
14

15 48. The collection of Plaintiff's call records includes the numbers called
16 by HRW and its staff; the date, time, and duration of the calls; and the method by
17 which the calls were billed. This information, when collected in bulk, provides the
18 government with the network of HRW's sources, colleagues, and associates within
19 the called Designated Countries.
20

21 49. Defendant's aggregation of this information discloses the associational
22 connections among HRW, its staff, and its associates within the called Designated
23 Countries, which ordinarily would not be disclosed to the public or the
24 government. This is information HRW often considers sensitive and private. With
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1 the information obtained by the Mass Surveillance Program, the government can
2 identify any and all of HRW's telephone contacts within the Designated Countries.

3 50. Even if the government never attempted to identify HRW's contacts
4 and associates within the Designated Countries, the fact that the government
5 collects this information in the first place—and the fact that this information
6 remains within the Defendants' possession to this day—substantially burdens
7 HRW's ability to effectively communicate with people inside the Designated
8 Countries. This burden, in turn, hinders HRW's ability to effectively engage in its
9 advocacy for global human rights.
10
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12 51. Because of the Mass Surveillance Program, Plaintiff cannot assure its
13 associates abroad that their communications records will not be shared with
14 American law enforcement or the government of another country. Plaintiff's
15 associations and human rights advocacy efforts, as well as those of its members
16 and staff, are substantially burdened by the fact that the Mass Surveillance
17 Program creates a permanent government record of all Plaintiff's telephone
18 communications with contacts in the Designated Countries.
19
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21 52. Plaintiff's associations and human rights advocacy efforts are burdened
22 by Defendants' search and analysis of information obtained through the Mass
23 Surveillance Program. Plaintiff's associations and political advocacy efforts are
24 further burdened by Defendants' use and disclosure of the information obtained
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1 from Defendants' searches and analyses of the Mass Surveillance Program
2 database(s).

3 53. Plaintiff's telephone communications information—collected, retained,
4 and searched pursuant to the Mass Surveillance Program—was at the time of
5 collection, and at all times thereafter, not relevant to an authorized investigation
6 with respect to controlled substances, listed chemicals, tableting machines, or
7 encapsulating machines.
8
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10 54. Defendants' bulk collection, retention, search, and use of the telephone
11 communications information of HRW and its staff are done without lawful
12 authorization, probable cause, and/or individualized suspicion—in violation of
13 constitutional limitations and in excess of constitutional authority.
14

15 55. Defendants, and each of them, have authorized, approved, supervised,
16 performed, caused, participated in, aided, abetted, counseled, commanded,
17 induced, procured, enabled, contributed to, facilitated, directed, controlled, assisted
18 in, and/or conspired in the Mass Surveillance Program. Defendants have
19 committed these acts willfully, knowingly, and intentionally. Defendants retain the
20 information gathered pursuant to the Mass Surveillance Program, will continue to
21 search and use such information, and absent an order of this Court enjoining and
22 restraining them from doing so, will begin to collect the information again, if
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26 Defendants have not already.
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COUNT I

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

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6 56. Plaintiff repeats and incorporates by reference the allegations in the
7 preceding paragraphs of this Complaint, as if set forth fully herein.
8

9 57. Plaintiff and its staff use telephone calls to communicate and to
10 associate with their associates within the Designated Countries, including to
11 communicate and to associate privately.
12

13 58. By their acts alleged herein, Defendants have violated and are violating
14 the First Amendment free speech and free association rights of Plaintiff and its
15 staff, including the right to communicate anonymously, the right to associate
16 privately, and the right to engage in protected advocacy free from government
17 interference.
18

19 59. By their acts alleged herein, Defendants have imposed a direct and
20 significant burden on the legal associations and speech of Plaintiff and its staff by,
21 among other things, compelling the disclosure of its associations, and eliminating
22 Plaintiff's ability to assure its associates in the Designated Countries abroad that
23 the fact of their communications with them will be kept confidential.
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1 unreasonable searches and seizures as guaranteed by the Fourth Amendment to the
2 Constitution of the United States.

3 65. Defendants are now engaging in and will continue to engage in the
4 above-described violations of Plaintiff's constitutional rights, and are thereby
5 irreparably harming Plaintiff. Plaintiff has no adequate remedy at law for
6 Defendants' continuing unlawful conduct, and Defendants will continue to violate
7 Plaintiff's legal rights unless enjoined and restrained by this Court.
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10 66. Plaintiff seeks this Court to declare that Defendants have violated its
11 Fourth Amendment rights; enjoin Defendants, their agents, successors, and assigns,
12 and all those in active concert and participation with them from violating
13 Plaintiff's rights under the Fourth Amendment to the United States Constitution;
14 and award such other and further equitable relief as is proper.
15
16

17 **PRAYER FOR RELIEF**

18 Plaintiff respectfully requests that the Court:

- 19
- 20 1. Excerise jurisdiction over Plaintiff's Complaint;
 - 21 2. Declare that the Mass Surveillance Program violates Plaintiff's rights
22 under the First and Fourth Amendments to the Constitution;
 - 23 3. Permanently enjoin Defendants from continuing the Mass
24 Surveillance Program under 21 U.S.C. § 876 or any other authority;
 - 25 4. Permanently enjoin Defendants from future search, use, or
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- dissemination of any of Plaintiff’s call records obtained through the Mass Surveillance Program;
- 5. Order Defendants to provide an inventory of all Plaintiff’s call records obtained through the Mass Surveillance Program;
- 6. Order Defendants to purge all Plaintiff’s call records obtained through the Mass Surveillance Program;
- 7. Award to Plaintiff reasonable attorneys’ fees and other costs of suit to the extent permitted by law; and
- 8. Grant such other and further relief as the Court deems just and proper.

Dated: April 7, 2015

Respectfully submitted,

s/ Mark Rumold

 MARK RUMOLD
 DAVID GREENE
 NATHAN D. CARDOZO
 LEE TIEN
 KURT OPSAHL
 HANNI FAKHOURY

 ELECTRONIC FRONTIER
 FOUNDATION

Counsel for Plaintiff Human Rights Watch

JURY DEMAND

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Plaintiff hereby requests 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: April 7, 2015

Respectfully submitted,

s/ Mark Rumold

MARK RUMOLD
DAVID GREENE
NATHAN D. CARDOZO
LEE TIEN
KURT OPSAHL
HANNI FAKHOURY

ELECTRONIC FRONTIER
FOUNDATION

Counsel for Plaintiff Human Rights Watch

Exhibit A

Exhibit A

LAW ENFORCEMENT SENSITIVE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Criminal No.: 13-274 (RC)
	:	
v.	:	
	:	
SHANTIA HASSANSHAH,	:	<i>Ex Parte</i> Pursuant to Court Order
	:	Filed Under Seal
Defendant.	:	
	:	

DECLARATION OF ROBERT PATTERSON

1. I am an Assistant Special Agent in Charge at the United States Drug Enforcement Administration (“DEA”), which is a component of the Department of Justice. I have held this position for 8 years. Based on my current role within DEA, I am familiar with the database that is described below. This declaration is based on my personal knowledge and on information that has been provided to me in my official capacity.

2. I make this declaration in response to this Court’s December 1, 2014 Order directing the government to “provide the Court with an *ex parte* declaration summarizing the contours of the law enforcement database used by Homeland Security Investigations to discover Hassanshahi’s phone number, including any limitations on how and when the database may be used.” I understand that the phone number referenced in the Court’s Order as “Hassanshahi’s phone number” is 818-971-9512 (hereinafter, “the 818 number”).

3. As described in the previously filed, public affidavit of Joshua J. Akronowitz, Government investigators learned that there was reason to believe that Iranian telephone number 982144406457 (hereinafter, “the Iranian number”) was relevant to an ongoing federal criminal investigation. The Iranian number was queried in a federal law enforcement database [REDACTED] [REDACTED] the database indicated that a call had been placed from the 818 number to the Iranian number.

LAW ENFORCEMENT SENSITIVE

4. This database [REDACTED] consisted of telecommunications metadata obtained from United States telecommunications service providers pursuant to administrative subpoenas served upon the service providers under the provisions of 21 U.S.C. § 876. This metadata related to international telephone calls originating in the United States and calling [REDACTED] designated foreign countries, one of which was Iran, that were determined to have a demonstrated nexus to international drug trafficking and related criminal activities. This metadata consisted exclusively of the initiating telephone number; the receiving telephone number; the date, time, and duration of the call; and the method by which the call was billed. No subscriber information or other personal identifying information was included in this database. No communication content was included in this database.

5. As noted, this database was a federal law enforcement database. It could be used to query a telephone number where federal law enforcement officials had a reasonable articulable suspicion that the telephone number at issue was related to an ongoing federal criminal investigation. The Iranian number was determined to meet this standard based on specific information indicating that the Iranian number was being used for the purpose of importing technological goods to Iran in violation of United States law.

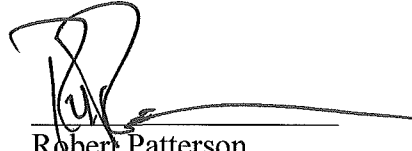
6. Use of the [REDACTED] database [REDACTED] that returned the 818 number was suspended in September 2013.¹ This database [REDACTED] is no longer being queried for

¹ [REDACTED]

LAW ENFORCEMENT SENSITIVE

investigatory purposes, and information is no longer being collected in bulk pursuant to 21 U.S.C. § 876.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to be 'R Patterson', written over a horizontal line.

Robert Patterson
Assistant Special Agent in Charge
U.S. Drug Enforcement Administration