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Human Rights Watch

12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**
 15 **WESTERN DIVISION**

17 HUMAN RIGHTS WATCH,	)	Case No: 2:15-cv-2573-PSG-JPR
)	
18 Plaintiff,	)	PLAINTIFF’S NOTICE OF
	)	MOTION AND MOTION FOR
19 v.	)	EXPEDITED DISCOVERY
)	
20 DRUG ENFORCEMENT)	
21 ADMINISTRATION, <i>et al.</i>,	)	Date: July 13, 2015
	)	Time: 1:30 p.m.
22 Defendants.	)	Courtroom 880 – Roybal
	)	Hon. Philip S. Gutierrez

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 13, 2015 at 1:30 p.m., before the Honorable Philip S. Gutierrez, in Courtroom 880 of the United States Courthouse for the Central District of California, located at 255 East Temple Street in Los Angeles, California, Plaintiff Human Rights Watch will and hereby does move the Court to allow limited expedited discovery in this case.

This Motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the pleadings and papers filed in this action; and such further argument and matters as may be offered at the time of the hearing of this Motion. As set forth in the accompanying Memorandum of Points and Authorities, there is good cause for the relief requested.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on May 7, 2015.

Dated: May 7, 2015

Respectfully submitted,

s/ Mark Rumold

MARK RUMOLD
DAVID GREENE
NATHAN D. CARDOZO
LEE TIEN
KURT OPSAHL
HANNI FAKHOURY
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Counsel for Plaintiff Human Rights Watch

1 I, Stephanie Shattuck, state that I am over 18 years of age and not a party to
2 this action. I am employed in the county where the mailing took place. My
3 business address is Electronic Frontier Foundation, 815 Eddy Street, San
4 Francisco, California 94109.

5
6 On May 7, 2015, I mailed from San Francisco, California the following
7 documents:

- 8 • Plaintiff's Notice of Motion and Motion for Expedited Discovery

9
10 I served the documents by enclosing them in a sealed envelope and
11 deposited the sealed envelope with the United States Postal Service with postage
12 fully prepaid.

13
14 The envelope was addressed to counsel for Defendant as follows:

15 Kathryn L. Wyer
16 Trial Attorney
17 U.S. Department of Justice
18 Civil Division, Federal Programs Branch
19 20 Massachusetts Ave, N.W.
20 P.O. Box 883 Ben Franklin Station
21 Washington, D.C. 20530

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Dated: May 7, 2015

24 
25 _____
26 Stephanie Shattuck

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 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**
 15 **WESTERN DIVISION**

17 HUMAN RIGHTS WATCH,	)	Case No: 2:15-cv-2573-PSG-JPR
)	
18 Plaintiff,	)	MEMORANDUM OF POINTS
	)	& AUTHORITIES IN
19 v.	)	SUPPORT OF PLAINTIFF'S
	)	MOTION FOR EXPEDITED
20 DRUG ENFORCEMENT)	DISCOVERY
21 ADMINISTRATION, <i>et al.</i> ,)	
)	
22 Defendants.)	Date: July 13, 2015
)	Time: 1:30 p.m.
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)	Hon. Philip S. Gutierrez
)	

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23 David Ingram, *Rights Group Sues DEA Over Bulk Collection of Phone*

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1 **I. INTRODUCTION**

2 Plaintiff Human Rights Watch (“HRW”) files this Motion for Expedited
3 Discovery concerning Defendants’ operation of the Mass Surveillance Program
4 (the “Program”)—an untargeted and suspicionless surveillance program of
5 Americans’ international call records. Because the Program was carried out in
6 secret for many years, some contours of the Program’s operation remain unclear.
7 Plaintiff seeks this limited expedited discovery at the outset of the case to inform
8 its decision to seek a preliminary injunction, to ensure that all defendants are
9 properly named, and to ultimately hasten the resolution of this case.
10
11

12 At this time, HRW seeks discovery of only three narrow categories of
13 information from only a single Defendant, the Drug Enforcement Administration
14 (“DEA”). That discovery, described in more detail below, includes:
15

- 16
- 17 (1) copies of all Program subpoenas requiring production of records of
18 Americans’ calls to certain, specified countries;
 - 19 (2) the names of all governmental agencies that have accessed
20 information collected through the Program; and
 - 21 (3) information regarding Defendant DEA’s ongoing access to data
22 collected through the Program.
23
24

25 There is good cause for the limited discovery HRW seeks. The requested
26 discovery is narrow in breadth; the requests are intended to hasten resolution of
27

1 this case; and the burden on DEA to comply with the requests will be minimal.
2 HRW therefore respectfully requests the Court grant its motion.

3 **II. STATEMENT OF FACTS**

4 This action challenges the constitutionality of Defendants’ Program of
5 untargeted and suspicionless surveillance of Americans’ international call records.
6 The Program was first disclosed to the public in a three-page declaration of Robert
7 Patterson, Assistant Special Agent in Charge at the DEA, filed in *United States v.*
8 *Hassanshahi*, Case No. 13–0274 (RC) (D.D.C.). *See* Complaint, Ex. A (“Patterson
9 Decl.”) (ECF No. 1). According to reports, the Program has been in operation since
10 1992, yet—prior to January 2015—it had never been disclosed to the public or to
11 any criminal defendant. *See* Compl. ¶¶ 26, 27.

12 The Program “maintains information about millions of calls made by
13 Americans, including Plaintiff HRW.” *Id.* ¶ 23. Defendants obtained call records
14 for the Program by issuing “subpoenas to American telecommunications service
15 providers, requiring the providers to turn over information in bulk about
16 Americans’ calls” to certain specified foreign countries (the “Designated
17 Countries”). *Id.* ¶ 25. Relying on these subpoenas, the “Program indiscriminately
18 sweeps in records of calls between the United States and the Designated
19 Countries—countries that are determined to have a ‘demonstrated nexus to
20 international drug trafficking and related criminal activities.’” *Id.* ¶ 29 (quoting
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1 Patterson Decl., ¶ 4). One of those countries is Iran. *Id.* ¶ 30.

2 The records collected through the Program are “retained and stored by
3 Defendants in one or more databases.” *Id.* ¶ 34. These databases are then searched
4 by officers and employees of various federal agencies, including DEA, DHS, and
5 FBI. *Id.* ¶ 35. Use of the Program database(s) is not limited to investigations of
6 illegal drug trafficking or production. *Id.* ¶ 36. Call records obtained from the
7 Program database(s) are then used and disseminated throughout the federal
8 government. *Id.* All of this was done without “any judicial oversight or
9 authorization.” *Id.* ¶ 25.

10 Plaintiff HRW is one of the world’s leading international human rights
11 organizations. *Id.* ¶ 39. HRW’s expert staff “conduct[s] fact-finding missions and
12 investigate[s] human rights abuses” around the world, including in countries with
13 drug trafficking or production problems. *Id.* ¶¶ 40, 41. HRW and its staff call
14 countries around the world to communicate with victims of or witnesses to human
15 rights abuses. *Id.* ¶¶ 44, 45. These communications, “including the mere fact that a
16 communication has occurred, are often extraordinarily sensitive.” *Id.* ¶¶ 44, 45.
17 HRW considers the records of its calls to be private, and this information would
18 ordinarily not be made public or disclosed to the government. *Id.* ¶ 49.
19 Nevertheless, through the Program, Defendants obtained, retain, and search
20 HRW’s call records.
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1 According to the Patterson declaration, use of the Program database was
2 “suspended” in September 2013, *id.* ¶ 37, and some press accounts have reported
3 that the collection and retention process has since been terminated. *See, e.g.*, David
4 Ingram, *Rights Group Sues DEA Over Bulk Collection of Phone Records*, Reuters
5 (Apr. 8, 2015).¹ Nevertheless, the status of all call records collected through the
6 Program, including HRW’s records, remains unsettled. *Id.*
7
8

9 **III. REQUESTED DISCOVERY**

10 HRW’s proposed discovery is limited and narrowly tailored. The
11 discovery—one request for production, one interrogatory, and one request for
12 admission—seeks the following:
13

- 14 (1) Copies of all Program subpoenas issued by Defendant DEA, from
15 1992 to the present, requiring the production of call records in bulk to
16 the following countries: Afghanistan, Colombia, Ecuador, Haiti,
17 Honduras, India, Iran, Jamaica, Mexico, Pakistan, Peru, and
18 Venezuela;
19
20 (2) The names of all government agencies that have accessed, either
21 directly or indirectly, the Program database(s); and
22
23 (3) An admission that Defendant DEA has ongoing access to data
24 collected through the Program.
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27 ¹ Available at [http://in.reuters.com/article/2015/04/08/us-usa-dea-lawsuit-
idINKBN0MZ1F720150408](http://in.reuters.com/article/2015/04/08/us-usa-dea-lawsuit-idINKBN0MZ1F720150408).

1 HRW's proposed discovery requests are attached hereto as Exhibits A, B,
2 and C.

3 **IV. THE COURT SHOULD ALLOW EXPEDITED DISCOVERY INTO**
4 **THE NATURE AND SCOPE OF THE MASS SURVEILLANCE**
5 **PROGRAM.**

6 **A. Expedited Discovery is Permissible Upon a Showing of Good**
7 **Cause.**

8 Pursuant to Federal Rule of Civil Procedure 26(d)(1), courts permit
9 expedited discovery before a Rule 26(f) conference upon a showing of "good
10 cause." *See Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D. Cal.
11 2009); *In re Countrywide Fin. Corp. Derivative Litigation*, 542 F. Supp. 2d 1160,
12 1179 (C.D. Cal. 2008); *see also St. Louis Group, Inc. v. Metals & Additives Corp.*,
13 275 F.R.D. 236, 239 (S.D. Tex. 2011) ("An increasing majority of district courts
14 have . . . adopted a "good cause" standard to determine whether to authorize
15 expedited discovery.") (collecting cases).² Good cause exists "where the need for
16 expedited discovery, in consideration of the administration of justice, outweighs
17 the prejudice to the responding party." *In re Countrywide*, 542 F. Supp. 2d at 1179
18 (quoting *Semitoil, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.
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26 ² *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source
27 before the parties have conferred as required by Rule 26(f), *except . . . when*
28 *authorized . . . by court order.*") (emphasis added).

1 Cal. 2002)).

2 To determine whether good cause exists, courts commonly consider factors
3 including, but not limited to, “(1) whether a preliminary injunction is pending;
4 (2) the breadth of the discovery requests; (3) the purpose for requesting the
5 expedited discovery; (4) the burden on the defendants to comply with the requests;
6 and (5) how far in advance of the typical discovery process the request was made.”
7
8 *Am. LegalNet*, 673 F. Supp. 2d at 1067 (citations and internal quotations omitted);
9
10 *see also Semitool*, 208 F.R.D. at 276–77.

11 **B. There Is Good Cause Here For Expedited Discovery.**

12
13 Balancing the factors outlined in *American LegalNet*, good cause exists for
14 allowing the expedited discovery HRW seeks. *See* 673 F. Supp. 2d at 1067.

15 **i. HRW Needs Expedited Discovery to Determine Whether a**
16 **Preliminary Injunction Is Necessary.**

17
18 “[C]ourts have found that expedited discovery may be justified to allow a
19 plaintiff to determine whether to seek an early injunction.” *Apple Inc. v. Samsung*
20 *Electronics Co.*, 2011 WL 1938154, at *2 (N.D. Cal. May 18, 2011). *Accord*
21 *NobelBiz, Inc. v. Wesson*, 2014 WL 1588715, at *1 (S.D. Cal. Apr. 18, 2014);
22 *Interserve, Inc. v. Fusion Garage PTE, Ltd.*, 2010 WL 143665, at *2 (N.D. Cal.
23 Jan. 7, 2010); *Semitool*, 208 F.R.D. at 276. This determination “provid[es] a
24
25 measure of clarity to the parties early in the proceeding and facilitate[es] effective
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1 case management.” *See NobelBiz*, 2014 WL 1588715, *2; *Apple*, 2011 WL
2 1938154, at *2.

3 HRW needs the requested discovery for this very purpose. HRW seeks
4 information concerning the scope of the Program and Defendant’s ongoing access
5 to information collected through the Program—information that, in turn, will
6 inform HRW’s decision to seek a preliminary injunction. HRW’s single request for
7 production, which seeks a limited number of Program subpoenas, will provide
8 HRW with information concerning the quantity of its call records swept up in
9 Defendants’ surveillance Program, thereby revealing the scope of the harm HRW
10 has suffered. Meanwhile, HRW’s single request for admission will provide
11 information about Defendant’s ongoing access to Program records—information
12 that will inform whether injunctive relief is necessary to prevent ongoing
13 unconstitutional Program activity. Because the requested discovery will permit
14 HRW to determine whether to seek an early injunction, the first *American*
15 *LegalNet* factor weighs in favor of permitting expedited discovery.
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21 **ii. HRW’s Requested Expedited Discovery Is Limited and**
22 **Narrowly Tailored.**

23 The limited nature of the proposed discovery also weighs in favor of
24 granting HRW’s motion. *See Am. LegalNet*, 673 F. Supp. 2d at 1067. Expedited
25 discovery is appropriate when it would “substantially contribute to moving [a] case
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1 forward” and is “narrowly tailored to this benefit.” *See Semitool*, 208 F.R.D. at
2 277. The proposed discovery satisfies both concerns. Namely, HRW seeks to
3 propound only a single request for production, a single interrogatory, and a single
4 request for admission, and each is limited and “narrowly tailored” to the goal of
5 expediting resolution of this case.
6

7
8 First, HRW seeks production of Program subpoenas for Americans’ calls to
9 a small subset of countries swept up in the Mass Surveillance Program. At its peak,
10 Defendants’ Program swept in records of billions of Americans’ calls to 116
11 countries around the world, including Canada, Mexico, and most of Central and
12 South America. *See* Brad Heath, *U.S. Secretly Tracked Billions of Calls for*
13 *Decades*, USA Today (Apr. 8, 2015).³ In contrast, HRW’s limited request only
14 concerns surveillance directed at Americans’ calls to twelve countries—countries
15 where HRW performs its vital human rights work and that the government has
16 already identified as major sources of drug production or trafficking. *See* Ex. A;
17 *see also* Compl. ¶¶ 32, 43.
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21 Second, HRW seeks a single admission concerning a single Defendant’s
22 current, ongoing access to the billions of Americans’ call records that Defendants
23 have collected. *See* Ex. C. The request’s focus on *current* access—as opposed to
24 access over the nearly twenty-year history of the Program—is narrowly tailored
25

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27 ³ Available at <http://www.usatoday.com/story/news/2015/04/07/dea-bulk-telephone-surveillance-operation/70808616/>

1 “as to time and scope.” *See American LegalNet*, 673 F. Supp. 2d at 1070.

2 And third, HRW seeks a single interrogatory requiring Defendants to name
3 each government agency that has accessed the Program data. *See Ex. B*. This
4 request, too, is narrowly tailored to identifying agencies involved in the Program,
5 not to uncovering all details concerning each agency’s participation.
6

7 **iii. HRW Seeks Expedited Discovery For the Purpose of**
8 **Hastening Resolution of This Case.**
9

10 The purpose of the requested discovery also weights in favor of granting
11 HRW’s motion. *See Am. LegalNet*, 673 F. Supp. 2d at 1067. As discussed above,
12 one purpose of HRW’s requested expedited discovery is to inform its decision
13 whether to move for a preliminary injunction. A second purpose of the requested
14 discovery is to facilitate the identification of unnamed defendants. In particular,
15 HRW’s third request—seeking the names of government agencies with access to
16 Program data—will allow HRW promptly to determine the proper defendants to
17 name and serve in this lawsuit. *See Compl.* ¶ 20 (naming “Defendants Does 1-
18 100,” the “persons, officers, officials, or entities who have authorized or
19 participated in the Mass Surveillance Program”). This interrogatory will thus
20 facilitate HRW’s compliance with this Court’s standing order requiring that Doe
21 Defendants be identified and served within 120 days after a case is filed. *See*
22 *Standing Order Regarding Newly Assigned Cases*, ¶ 1 (ECF No. 9).
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1 **V. CONCLUSION**

2 For the reasons set forth herein, HRW respectfully requests that this Court
3 grant its motion. Furthermore, should the Court desire, prior to taking the requested
4 discovery, HRW will meet and confer with Defendants regarding a protective
5 order for the information subject to HRW's request and submit a proposed
6 protective order to the Court.
7

8
9 Dated: May 7, 2015

Respectfully submitted,

10
11 *s/ Mark Rumold*

12 _____
13 MARK RUMOLD
14 DAVID GREENE
15 NATHAN D. CARDOZO
16 LEE TIEN
17 KURT OPSAHL
18 HANNI FAKHOURY
19 JAMIE L. WILLIAMS
20 ANDREW CROCKER

ELECTRONIC FRONTIER
FOUNDATION

Counsel for Plaintiff Human Rights Watch

EXHIBIT A
TO MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY
Case No: 2:15-cv-2573-PSG-JPR
Human Rights Watch v. DEA, et al.

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9 *Counsel for Plaintiff*
10 *Human Rights Watch*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14
15 HUMAN RIGHTS WATCH,) Case No: 2:15-cv-2573-PSG-JPR
16)
17 Plaintiff,) **PLAINTIFF’S FIRST REQUEST**
18 v.) **FOR ADMISSION TO**
19 DRUG ENFORCEMENT) **DEFENDANT DRUG**
ADMINISTRATION, *et al.*,) **ENFORCEMENT**
20) **ADMINISTRATION**
21 Defendants.)
22)
23)

1 Pursuant to Federal Rule of Civil Procedure 36 and this Court's Order
2 Granting Plaintiff's Motion for Expedited Discovery pursuant to Federal Rule of
3 Civil Procedure 26(d)(1), Plaintiff Human Rights Watch ("HRW") hereby requests
4 that Defendant Drug Enforcement Administration ("DEA") admit or deny in
5 writing, under oath, the following Request for Admission, and that the answer be
6 signed and verified by Defendant DEA and served upon the undersigned counsel
7
8
9 no later than fifteen (15) days from the date of service hereof.

10 **DEFINITIONS**

11 1. The singular form of a word should be interpreted as plural wherever
12 necessary to bring within the scope of the Request for Admission any information
13 that might otherwise be construed to be outside its scope.
14

15 2. The terms "AND" and "OR" should be construed either disjunctively
16 or conjunctively wherever necessary to bring within the scope of the Request for
17 Admission any information that might otherwise be construed to be outside its
18 scope.
19

20 3. The terms "ANY," "EACH," "ALL," and "EVERY" shall be
21 construed interchangeably wherever necessary to bring within the scope of the
22 Request for Admission any information that might otherwise be construed to be
23 outside its scope.
24

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1 date, time, and duration of the call; the method by which the call was billed; and
2 any other information RELATING TO a telephone call.

3 10. The term “COMMUNICATION RECORDS COLLECTED
4 PURSUANT TO THE MASS SURVEILLANCE PROGRAM” includes any and
5 all COMMUNICATION RECORDS obtained, acquired, searched, analyzed, used,
6 and/or disseminated pursuant to the MASS SURVEILLANCE PROGRAM.
7

8 11. The term “DESIGNATED COUNTRIES” means any and all
9 countries determined to have a nexus to international drug trafficking and related
10 activities, as described in the Declaration of Robert Patterson filed in *United States*
11 *v. Hassanshahi*, No. 13-cr-274 (RC) (D.D.C.), attached as Exhibit A to the
12 Complaint filed in THIS ACTION.
13

14 12. The term “MASS SURVEILLANCE PROGRAM” refers to a
15 program for the bulk collection, retention, search, use, and dissemination of
16 Americans’ call records for calls originating in the United States and terminating in
17 any of the DESIGNATED COUNTRIES, as described in the Declaration of Robert
18 Patterson filed in *United States v. Hassanshahi*, No. 13-cr-274 (RC) (D.D.C.),
19 attached as Exhibit A to the Complaint filed in THIS ACTION.
20

21 13. The term “SUBPOENA” means legal process, sent to a
22 telecommunication service provider operating within the United States, requiring
23 the production of COMMUNICATION RECORDS in bulk.
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1 14. Unless otherwise indicated, the Request for Admission refers to the
2 period of time covering the entire duration of the MASS SURVEILLANCE
3 PROGRAM.

4
5 **INSTRUCTIONS**

6 1. YOU are required to answer the Request for Admission on the basis
7 of YOUR entire knowledge.

8
9 2. If YOUR response to the Request for Admission is anything but an
10 unqualified admission, YOU shall identify the part of the Request YOU do not
11 admit without qualification and state YOUR good faith basis for not admitting the
12 entire Request.

13
14 3. The Request for Admission is a continuing Request pursuant to
15 Federal Rule of Civil Procedure 26. If YOU or anyone acting on YOUR behalf
16 obtains or learns of additional responsive information, or determines that YOUR
17 existing responses are inaccurate, inadequate, or incomplete, YOU shall promptly
18 furnish a supplemental answer under oath.

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21 4. If YOU make any objection to the Request for Admission herein,
22 YOU must produce all information covered by the Request and not subject to
23 YOUR objection.

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REQUEST FOR ADMISSION

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REQUEST FOR ADMISSION NO. 1:

Admit that YOU currently have ACCESS to COMMUNICATION RECORDS COLLECTED PURSUANT TO THE MASS SURVEILLANCE PROGRAM, including copies of COMMUNICATION RECORDS, no matter where those COMMUNICATION RECORDS currently reside.

Dated: _____

Respectfully submitted,

s/ Mark Rumold

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

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Counsel for Plaintiff Human Rights Watch

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10 *Human Rights Watch*

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13 **WESTERN DIVISION**

15 HUMAN RIGHTS WATCH,)
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19 DRUG ENFORCEMENT)
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21 Defendants.)
22)
23)

Case No: 2:15-cv-2573-PSG-JPR

**PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF
DOCUMENTS TO
DEFENDANT DRUG
ENFORCEMENT
ADMINISTRATION**

1 Pursuant to Federal Rule of Civil Procedure 34, and this Court's Order
2 Granting Plaintiff's Motion for Expedited Discovery pursuant to Federal Rule of
3 Civil Procedure 26(d)(1), Plaintiff Human Rights Watch ("HRW") hereby requests
4 that Defendant Drug Enforcement Administration ("DEA") produce for inspection
5 and copying the documents described below. Pursuant to Federal Rule of Civil
6 Procedure 34(b), the requested documents shall be produced for inspection and
7 copying within fifteen (15) days of the date of service of this Request, to Mark
8 Rumold or his designated representative, in the offices of the Electronic Frontier
9 Foundation, 815 Eddy Street, San Francisco, California, 94109, or at such other
10 place as counsel for the parties shall mutually agree.

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14 **DEFINITIONS**

15 1. The singular form of a word should be interpreted as plural wherever
16 necessary to bring within the scope of the Request for Production any information
17 that might otherwise be construed to be outside its scope.

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19 2. The terms "AND" and "OR" should be construed either disjunctively
20 or conjunctively wherever necessary to bring within the scope of the Request for
21 Production any information that might otherwise be construed to be outside its
22 scope.
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24
25 3. The terms "ANY," "EACH," "ALL," and "EVERY" shall be
26 construed interchangeably wherever necessary to bring within the scope of the
27

1 Request for Production any information that might otherwise be construed to be
2 outside its scope.

3 4. The term “THIS ACTION” refers to this litigation pending in the
4 United States District Court for the Central District of California.
5

6 5. The terms “YOU,” “YOUR,” or “DEFENDANT” refer to Defendant
7 Drug Enforcement Administration.
8

9 6. As used herein, the phrase “RELATING TO” means consisting of,
10 reflecting, or being in any way legally, logically, or factually connected with the
11 matter discussed.
12

13 7. The term “ACCESS” means the act of acquiring, collecting, retaining,
14 possessing, observing, receiving, or reviewing, whether done directly (*i.e.*, by an
15 AGENCY) or indirectly (*i.e.*, by one AGENCY at the request of another
16 AGENCY).
17

18 8. The term “AGENCY” includes any and all permanent or semi-
19 permanent departments or organizations in the machinery of government—whether
20 local, state, federal, international, or multi-jurisdictional—that are responsible for
21 the oversight and/or administration of any functions, as well as their employees,
22 officers, and officials.
23

24 9. The term “COMMUNICATION RECORD” refers to any written or
25 electronic representation of data RELATING TO a telephone call, including, but
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1 not limited to the initiating telephone number; the receiving telephone number; the
2 date, time, and duration of the call; the method by which the call was billed; and
3 any other information RELATING TO a telephone call.
4

5 10. The term “COMMUNICATION RECORDS COLLECTED
6 PURSUANT TO THE MASS SURVEILLANCE PROGRAM” includes any and
7 all COMMUNICATION RECORDS obtained, acquired, searched, analyzed, used,
8 and/or reviewed pursuant to the MASS SURVEILLANCE PROGRAM.
9

10 11. The term “DESIGNATED COUNTRIES” means any and all
11 countries determined to have a nexus to international drug trafficking and related
12 activities, as described in the Declaration of Robert Patterson filed in *United States*
13 *v. Hassanshahi*, No. 13-cr-274 (RC) (D.D.C.), attached as Exhibit A to the
14 Complaint filed in THIS ACTION.
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17 12. The term “MASS SURVEILLANCE PROGRAM” refers to a
18 program for the bulk collection, retention, search, use, and dissemination of
19 Americans’ call records for calls originating in the United States and terminating in
20 any of the DESIGNATED COUNTRIES, as described in the Declaration of Robert
21 Patterson filed in *United States v. Hassanshahi*, No. 13-cr-274 (RC) (D.D.C.),
22 attached as Exhibit A to the Complaint filed in THIS ACTION.
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1 control, state: (1) the disposition of the document; (2) the date such disposition was
2 made; (3) (a) the identity and address of the present custodian of the document, or
3 (b) if it no longer exists: (i) identify the person(s) who made the decision to dispose
4 of the document(s); (ii) state the reason(s) for the disposition; and (iii) provide a
5 description of the document and its contents.
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7
8 3. In the event any information is withheld on a claim of attorney-client
9 privilege or work product immunity, YOU are required to provide a privilege log
10 which includes at least the following information: the nature of the information
11 contained in the withheld document; the date of the document; its source and
12 subject matter; all persons to whom the document has been disclosed, such as
13 would enable a privilege or immunity claim to be determined; and a citation to any
14 authority which YOU assert supports any claim of privilege or immunity.
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17 4. If YOU cannot respond to the document request fully, after a diligent
18 attempt to attain the requested information, YOU are required to answer the
19 document request to the extent possible, specify the portion of the document
20 request to which YOU are unable to respond, and provide whatever information
21 YOU have regarding the unanswered portion.
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REQUEST FOR PRODUCTION OF DOCUMENTS

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REQUEST FOR PRODUCTION NO. 1:

All SUBPOENAS, issued as part of the MASS SURVEILLANCE PROGRAM, from 1992 to the present, for the production of call records to the following countries: Afghanistan, Colombia, Ecuador, Haiti, Honduras, India, Iran, Jamaica, Mexico, Pakistan, Peru, and Venezuela.

Dated: _____

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 C
TO MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY
Case No: 2:15-cv-2573-PSG-JPR
Human Rights Watch v. DEA, et al.

EXHIBIT C
TO MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY

1 MARK RUMOLD (SBN 279060)
mark@eff.org
2 DAVID GREENE (SBN 160107)
3 NATHAN D. CARDOZO (SBN 259097)
LEE TIEN (SBN 148216)
4 KURT OPSAHL (SBN 191303)
5 HANNI FAKHOURY (SBN 252629)
ELECTRONIC FRONTIER FOUNDATION
6 815 Eddy Street
7 San Francisco, CA 94109
Telephone: (415) 436-9333
8 Facsimile: (415) 436-9993

9 *Counsel for Plaintiff*
10 *Human Rights Watch*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14
15 HUMAN RIGHTS WATCH,) Case No: 2:15-cv-2573-PSG-JPR
16)
17 Plaintiff,) **PLAINTIFF’S FIRST**
18 v.) **INTERROGATORY TO**
19 DRUG ENFORCEMENT) **DEFENDANT DRUG**
ADMINISTRATION, *et al.*,) **ENFORCEMENT**
20) **ADMINISTRATION**
21 Defendants.)
22)
23)

1 Pursuant to Federal Rule of Civil Procedure 33, and this Court's Order
2 Granting Plaintiff's Motion for Expedited Discovery pursuant to Federal Rule of
3 Civil Procedure 26(d)(1), Plaintiff Human Rights Watch ("HRW") hereby requests
4 that Defendant Drug Enforcement Administration ("DEA") answer the following
5 Interrogatory, in writing and under oath, and that the answer be signed and verified
6 by Defendant DEA and served upon the undersigned counsel no later than fifteen
7
8
9 (15) days from the date of service hereof.

10 **DEFINITIONS**

11 1. The singular form of a word should be interpreted as plural wherever
12 necessary to bring within the scope of the Interrogatory any information that might
13 otherwise be construed to be outside its scope.

14 2. The terms "AND" and "OR" should be construed either disjunctively
15 or conjunctively wherever necessary to bring within the scope of the Interrogatory
16 any information that might otherwise be construed to be outside its scope.

17 3. The terms "ANY," "EACH," "ALL," and "EVERY" shall be
18 construed interchangeably wherever necessary to bring within the scope of the
19 Interrogatory any information that might otherwise be construed to be outside its
20 scope.

21 4. The term "THIS ACTION" refers to this litigation pending in the
22 United States District Court for the Central District of California.
23
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1 5. The terms “YOU,” “YOUR,” or “DEFENDANT” refer to Defendant
2 Drug Enforcement Administration.

3 6. As used herein, the phrase “RELATING TO” means consisting of,
4 reflecting, or being in any way legally, logically, or factually connected with the
5 matter discussed.
6

7 7. The term “ACCESS” means the act of acquiring, collecting, retaining,
8 possessing, observing, receiving, or reviewing, whether done directly (*i.e.*, by an
9 AGENCY) or indirectly (*i.e.*, by one AGENCY at the request of another
10 AGENCY).
11

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13 permanent departments or organizations in the machinery of government—whether
14 local, state, federal, international, or multi-jurisdictional—that are responsible for
15 the oversight and/or administration of any functions, as well as their employees,
16 officers, and officials.
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18 9. The term “COMMUNICATION RECORD” refers to any written or
19 electronic representation of data RELATING TO a telephone call, including, but
20 not limited to the initiating telephone number; the receiving telephone number; the
21 date, time, and duration of the call; the method by which the call was billed; and
22 any other information RELATING TO a telephone call.
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INSTRUCTIONS

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2 1. You are required to answer the Interrogatory on the basis of YOUR
3 entire knowledge.

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5 2. The Interrogatory is continuing in nature pursuant to Rule 26 of the
6 Federal Rules of Civil Procedure. If YOU or anyone acting on YOUR behalf
7 obtains or learns of additional responsive information, or determines that YOUR
8 existing response to the Interrogatory is inaccurate, inadequate, or incomplete,
9 YOU shall promptly furnish a supplemental answer under oath.

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11 3. If YOU make any objection to the Interrogatory herein, YOU must
12 produce all information covered by the Interrogatory and not subject to YOUR
13 objection.
14

INTERROGATORY

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17 **INTERROGATORY NO. 1:**

18 Identify any and all AGENCIES that have, or had, ACCESS to
19 COMMUNICATION RECORDS COLLECTED PURSUANT TO THE MASS
20 SURVEILLANCE PROGRAM.
21

22 Dated: _____

Respectfully submitted,

23
24 *s/ Mark Rumold*
25 MARK RUMOLD
26 DAVID GREENE
27 NATHAN D. CARDOZO
LEE TIEN

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KURT OPSAHL
HANNI FAKHOURY

ELECTRONIC FRONTIER
FOUNDATION

Counsel for Plaintiff Human Rights Watch

1 I, Stephanie Shattuck, state that I am over 18 years of age and not a party to
2 this action. I am employed in the county where the mailing took place. My
3 business address is Electronic Frontier Foundation, 815 Eddy Street, San
4 Francisco, California 94109.
5

6 On May 7, 2015, I mailed from San Francisco, California the following
7 documents:
8

- 9 • Memorandum of Points & Authorities in Support of Plaintiff's Motion
10 for Expedited Discovery
11

12 I served the documents by enclosing them in a sealed envelope and
13 deposited the sealed envelope with the United States Postal Service with postage
14 fully prepaid.
15

16 The envelope was addressed to counsel for Defendant as follows:

17 Kathryn L. Wyer
18 Trial Attorney
19 U.S. Department of Justice
20 Civil Division, Federal Programs Branch
21 20 Massachusetts Ave, N.W.
22 P.O. Box 883 Ben Franklin Station
23 Washington, D.C. 20530

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Dated: May 7, 2015

26 
27 _____
28 Stephanie Shattuck

1 MARK RUMOLD (SBN 279060)
 mark@eff.org
 2 DAVID GREENE (SBN 160107)
 3 NATHAN D. CARDOZO (SBN 259097)
 LEE TIEN (SBN 148216)
 4 KURT OPSAHL (SBN 191303)
 5 HANNI FAKHOURY (SBN 252629)
 6 JAMIE L. WILLIAMS (SBN 279046)
 6 ANDREW CROCKER (SBN 291596)
 7 ELECTRONIC FRONTIER FOUNDATION
 815 Eddy Street
 8 San Francisco, CA 94109
 9 Telephone: (415) 436-9333
 Facsimile: (415) 436-9993

10
 11 *Counsel for Plaintiff*
Human Rights Watch

12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**
 15 **WESTERN DIVISION**

17 HUMAN RIGHTS WATCH,	)	Case No: 2:15-cv-2573-PSG-JPR
)	
18 Plaintiff,	)	[PROPOSED] ORDER
	)	GRANTING PLAINTIFF’S
19 v.	)	MOTION FOR EXPEDITED
	)	DISCOVERY
20 DRUG ENFORCEMENT)	
21 ADMINISTRATION, <i>et al.</i> ,)	
)	
22 Defendants.	)	Date: July 13, 2015
	)	Time: 1:30 p.m.
	)	Courtroom 880 – Roybal
	)	Hon. Philip S. Gutierrez

1 Plaintiff Human Rights Watch's motion for expedited discovery came on for
2 hearing before this Court on July 13, 2015. The Court has considered the papers in
3 support of Plaintiff's motion, the applicable law, the written and oral arguments of
4 the parties, and its file in this matter. After full consideration of these materials and
5 for good cause appearing,

- 7 1. The motion is **GRANTED** and it is hereby **ORDERED** that Plaintiff
8 may immediately serve its limited discovery requests on Defendant
9 Drug Enforcement Administration; and
- 11 2. It is further **ORDERED** that Defendant shall submit its responses to
12 Plaintiff's discovery within fifteen days.

15 Dated: _____

16 HON. PHILIP S. GUTIERREZ
17 UNITED STATES DISTRICT COURT JUDGE

1 I, Stephanie Shattuck, state that I am over 18 years of age and not a party to
2 this action. I am employed in the county where the mailing took place. My
3 business address is Electronic Frontier Foundation, 815 Eddy Street, San
4 Francisco, California 94109.
5

6 On May 7, 2015, I mailed from San Francisco, California the following
7 documents:
8

- 9 • [Proposed] Order Granting Plaintiff's Motion for Expedited
10 Discovery

11 I served the documents by enclosing them in a sealed envelope and
12 deposited the sealed envelope with the United States Postal Service with postage
13 fully prepaid.
14

15 The envelope was addressed to counsel for Defendant as follows:

16 Kathryn L. Wyer
17 Trial Attorney
18 U.S. Department of Justice
19 Civil Division, Federal Programs Branch
20 20 Massachusetts Ave, N.W.
21 P.O. Box 883 Ben Franklin Station
22 Washington, D.C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

23 Dated: May 7, 2015

24 
25 _____
26 Stephanie Shattuck