

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WORKING ASSETS FUNDING SERV.,
INC./CREDO MOBILE, INC.,
Petitioner-Appellant,

CLOUDFLARE,
Petitioner-Appellant,

v.

JEFFERSON B. SESSIONS III,
Attorney General of
the United States,
Respondent-Appellee.

Nos. 16-16067,
16-16081, 16-16082

**NOTICE CONCERNING NATIONAL SECURITY LETTER
AT ISSUE IN NO. 16-16067, UNSEALING OF BRIEFS, AND PUBLIC
IDENTIFICATION OF THE APPELLANTS**

The government's appellee brief (at 19) informed the Court that the Federal Bureau of Investigation (FBI) had closed its investigation related to the National Security Letter (NSL) at issue in appeal No. 16-16067. The government's brief explained that, pursuant to the termination procedures adopted by the Attorney General as required by the USA FREEDOM Act,

the FBI was undertaking a review of the nondisclosure requirement in the referenced NSL associated with the now-closed investigation. See Br. 15, 19. The FBI completed that review and determined that the recipient of the NSL may now disclose the NSL, as discussed more fully in the attached letter to the recipient that the FBI Special Agent in Charge signed on March 16, 2017.

In light of the disclosure the FBI has now authorized in No. 16-16067, the disclosure the FBI previously authorized in No. 16-16082 (see Doc. 67), and the disclosures required by the district court's order in 16-16081, and pursuant to the authority provided by 28 U.S.C. § 2709(c), the FBI undertook a review of the redacted portions of the parties' briefs filed in this Court. The FBI has determined that the redactions may be removed and the previously sealed briefs may be filed on the public record. Accordingly, the government will file a new, public version of its brief, and the NSL recipients may do likewise.

Finally, under the authority provided by 28 U.S.C. § 2709(c), the FBI also has determined that the petitioners-appellants may publicly be

identified on the Court's docket and in future filings in these proceedings. In light of the FBI's determination in its post-investigation review (in No. 16-16067) and the district court's order (in No. 16-16081), CREDO Mobile, the recipient of the NSLs at issue in those cases, is free to identify itself as the party seeking judicial review of the nondisclosure orders relating to the NSLs at issue in those cases. Cloudflare is the recipient of the two NSLs at issue in No. 16-16082. As a result of the FBI's post-investigation review, the FBI previously authorized Cloudflare to disclose one of the NSLs it received. See Doc. 67. A nondisclosure order continues to apply to the second NSL sent to Cloudflare. Nevertheless, public filings in this case have made it clear that Cloudflare is challenging nondisclosure orders relating to two NSLs. See, e.g., Public Opening Br. 11. And, consistent with the FBI's rescission of the nondisclosure order concerning the first NSL, Cloudflare publicly identified itself as a party to appeal No. 16-16082. See Kenneth R. Carter, Cloudflare's Transparency Report for Second Half 2016 and an Additional Disclosure for 2013, <http://goo.gl/7IEvgd> (blog entry). In light of the authorized public disclosures relating to appeal No.

16-16082, the FBI has determined that Cloudflare may be identified as a party to this litigation and so as the recipient of a second NSL. The nondisclosure order applicable to the second NSL continues to require Cloudflare to refrain from disclosing any information concerning the NSL other than the fact that Cloudflare received a second NSL that is the subject of this litigation.

Respectfully submitted,

s/ Lewis S. Yelin

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U.S. Department of Justice

Federal Bureau of Investigation

File No. NSL-11-331019

Phoenix Division
21711 N. 7th Street
Phoenix, AZ 85024-5118
March 16, 2017

Ms. Jean Parker
Legal Director
CREDO Mobile
Custodian of Records Working Assets/CREDO
101 Market St, Ste 700
San Francisco, CA 94105
415-369-2053

Dear Ms. Parker:

Pursuant to Title 18, United States Code (U.S.C.), Section 2709 (Section 201 of the Electronic Communications Privacy Act of 1986), the FBI issued a National Security Letter (NSL) NSL-11-331019 to CREDO Mobile. The NSL included a nondisclosure requirement that prohibited you, any officer, employee, or agent of your company from disclosing the letter and that the FBI had sought or obtained access to information, other than to those to whom disclosure was necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to the letter. Per the USA FREEDOM Act of 2015 and the Termination Procedures for NSL Nondisclosure Requirement, the FBI has reviewed whether to continue the nondisclosure requirement in the NSL and determined that nondisclosure is no longer necessary with respect to certain information contained in the NSL as set forth below.

Accordingly, and consistent with law, you may exercise your discretion to disclose the following:

- The fact that you received the NSL on a certain date; and
- Whether or not you provided responsive information to the FBI pursuant to the NSL.

Please note that the nondisclosure requirement remains in place for any information regarding the customer account(s) for which information was sought, as well as any other information that could be used to identify the subscriber(s) for the customer account(s). If you choose, you may disclose the NSL itself provided both that you redact the customer account number(s) from the NSL and any associated subscriber information, and that such disclosure would be consistent with other legal obligations you may have.

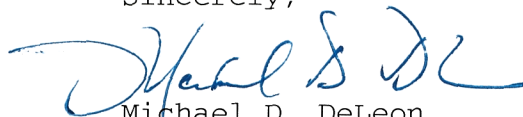
Additionally, consistent with the relevant statute, the FBI requests that the name and telephone number of the FBI Special Agent included on the NSL be redacted because disclosure may result in danger to the life or physical safety of a person. Please note that the name and telephone number

of the FBI Special Agent appear in two places on the NSL and should be redacted accordingly:

- On page 2 of the NSL, in the paragraph discussing your right to challenge the NSL, in the sentence that reads, "That notice must be mailed or faxed to the Phoenix Division, attention [redact name and telephone number], with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL."
- On page 3, in the second-to-last paragraph of the NSL, in a sentence that reads, "Any questions you have regarding this letter should be directed to the San Francisco Division or [redact name and telephone number]."

Please direct any questions you have regarding this letter to the Phoenix FBI Field Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael D. DeLeon". The signature is stylized with a large initial "M" and a long horizontal stroke at the end.

Michael D. DeLeon
Special Agent in Charge
Phoenix Division
Federal Bureau of Investigation

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Notice Concerning National Security Letter at Issue in No. 16-16067, Unsealing of Briefs, and Public Identification of the Appellants with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 20, 2017.

I certify that on the same date, I served the other participants in this case by electronic mail, pursuant to a written agreement.

s/ Lewis S. Yelin _____
Lewis S. Yelin
*Attorney for Respondent-
Appellee*