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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FIRST UNITARIAN CHURCH OF LOS)
ANGELES; BILL OF RIGHTS DEFENSE)
COMMITTEE; CALGUNS FOUNDATION,)
INC.; CALIFORNIA ASSOCIATION OF)
FEDERAL FIREARMS LICENSEES, INC.;)
COUNCIL ON AMERICAN ISLAMIC)
RELATIONS-CALIFORNIA; COUNCIL ON)
AMERICAN ISLAMIC RELATIONS-OHIO;)
COUNCIL ON AMERICAN ISLAMIC)
RELATIONS-FOUNDATION, INC.; FRANKLIN)
ARMORY; FREE PRESS; FREE SOFTWARE)
FOUNDATION; GREENPEACE, INC.; HUMAN)
RIGHTS WATCH; MEDIA ALLIANCE;)
NATIONAL ORGANIZATION FOR THE)
REFORM OF MARIJUANA LAWS,)
CALIFORNIA CHAPTER; OPEN)
TECHNOLOGY INSTITUTE; PEOPLE FOR)
THE AMERICAN WAY; PUBLIC)
KNOWLEDGE; STUDENTS FOR SENSIBLE)
DRUG POLICY; TECHFREEDOM; and)
UNITARIAN UNIVERSALIST SERVICE)
COMMITTEE;)

Plaintiffs,

v.

NATIONAL SECURITY AGENCY and KEITH)
B. ALEXANDER, its Director, in his official and)
individual capacities; the UNITED STATES OF)

CASE NO:

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

DEMAND FOR JURY TRIAL

1 AMERICA; DEPARTMENT OF JUSTICE and)
ERIC H. HOLDER, its Attorney General, in his)
2 official and individual capacities; Acting Assistant)
Attorney General for National Security JOHN P.)
3 CARLIN, in his official and individual capacities;)
FEDERAL BUREAU OF INVESTIGATION and)
4 ROBERT S. MUELLER, its Director, in his)
official and individual capacities; JAMES R.)
5 CLAPPER, Director of National Intelligence, in)
his official and individual capacities, and DOES 1-)
6 100,)

7 Defendants.)

1. Plaintiffs bring this action on behalf of themselves and, where indicated, on behalf of their members and staff. Plaintiffs allege as follows:

PRELIMINARY STATEMENT

2. Plaintiffs, as described more particularly below, are associations, as well as the members and staffs of associations, who use the telephone to engage in private communications supportive of their associations and activities, including engaging in speech, assembly, petition for the redress of grievances, and the exercise of religion.

3. This lawsuit challenges an illegal and unconstitutional program of dragnet electronic surveillance, specifically the bulk acquisition, collection, storage, retention, and searching of telephone communications information (the “Associational Tracking Program”) conducted by the National Security Agency (NSA) and the other defendants (collectively, “Defendants”).

4. The Associational Tracking Program is vast. It collects telephone communications information for all telephone calls transiting the networks of all major American telecommunication companies, including Verizon, AT&T, and Sprint, ostensibly under the authority of section 215 of the USA PATRIOT Act, codified at 50 U.S.C. § 1861.

5. The communications information that Defendants collect in the Associational Tracking Program is retained and stored by Defendants in one or more databases. The Program collects information concerning all calls wholly within the United States, including local telephone calls, as well as all calls between the United States and abroad, regardless of a connection to international terrorism, reasonable suspicion of criminality, or any other form of wrongdoing. This information is stored for at least five years. Defendants have indiscriminately obtained, and stored the telephone communications information of millions of ordinary Americans as part of the Associational Tracking Program.

6. Defendants search and analyze the Associational Tracking Program's database(s) for various purposes, including but not limited to, obtaining the communications history of particular phone numbers, which, when aggregated, reveals those numbers' contacts and associations over time.

7. Defendants' collection of telephone communications information includes, but is not limited to, records indicating who each customer communicates with, at what time, for how long and with what frequency communications occur. This communications information discloses the expressive and private associational connections among individuals and groups, including Plaintiffs and their members and staff.

8. The Associational Tracking Program has been going on in various forms since October 2001.

9. The bulk collection of telephone communications information without a valid, particularized warrant supported by probable cause violates the First, Fourth, and Fifth Amendments, as well as statutory prohibitions and limitations on electronic surveillance.

10. Defendants' searches of the Associational Tracking Program database(s) without a valid, particularized warrant supported by probable cause violate the First, Fourth, and Fifth Amendments.

11. Plaintiffs are organizations, associations, and advocacy groups, their staffs, and their members who are current subscribers to Verizon and other telephone services. Using the Associational Tracking Program, Defendants collect, acquire, retain, and search the telephone communications records of the telephone communications of Plaintiffs and their members and staff.

JURISDICTION AND VENUE

12. This court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 702, and the Constitution.

13. Plaintiffs are informed, believe, and thereon allege that Defendants have sufficient contacts with this district generally and, in particular, with the events herein alleged, that Defendants are subject to the exercise of jurisdiction of this court over the person of such Defendants and that venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

14. Plaintiffs are informed, believe, and thereon allege that a substantial part of the events giving rise to the claims herein alleged occurred in this district and that Defendants and/or agents of Defendants may be found in this district.

15. **Intradistrict Assignment:** Assignment to the San Francisco/Oakland division is proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events and omissions giving rise to this lawsuit occurred in this district and division.

PARTIES

16. Plaintiff First Unitarian Church of Los Angeles (First Unitarian) was founded in 1877 by Caroline Seymour Severance, a woman who worked all her life for causes such as the abolition of slavery and women's suffrage. First Unitarian is located in Los Angeles, California. Throughout its history members of First Unitarian defined their religious goals in terms of justice, equality, and liberty for all persons. During the middle decades of the 20th century, First Unitarian provided aid to Japanese-Americans displaced by internment camps, defended free speech against anti-communist hysteria, and protested nuclear proliferation. In the 1980s, First Unitarian provided sanctuary to Central American refugees and, in recent decades, First Unitarian opened its building as a community center for the economically-depressed and ethnically-diverse neighborhood of MacArthur Park. Members of First Unitarian have been quick to engage in difficult work and controversial ideas and are proud of their contribution to moving the world closer to justice for all. First Unitarian brings this action on behalf of itself and its adversely affected members and staff.

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

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

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

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

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

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

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

1 24. 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 25. 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 26. 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 27. Plaintiff National Organization for the Reform of Marijuana Laws, California Chapter
18 (NORML, California Chapter) is a non-profit, membership organization located in Berkeley,
19 California. NORML, California Chapter is dedicated to reforming California's marijuana laws and
20 its mission is to establish the right of adults to use cannabis legally. NORML, California Chapter
21 brings this action on behalf of itself and its adversely affected members and staff.

22 28. Plaintiff Open Technology Institute (OTI), part of the New America Foundation, is a
23 non-profit, public policy institute based in Washington, D.C. OTI's mission is strengthening human
24 communication through grounded research, technological innovation, and the reform of political
25 structures; helping to promote affordable, universal, and ubiquitous communications
26 through partnerships with communities, researchers, industry, and public interest groups; and
27 maximizing the potentials of innovative open technologies for poor, rural, and other underserved
28 constituencies. OTI brings this action on behalf of itself and its adversely affected staff.

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

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

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

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

26 33. Plaintiff Unitarian Universalist Service Committee (UUSC) is a non-profit,
27 membership organization based in Cambridge, Massachusetts. UUSC advances human rights and
28 social justice around the world, partnering with those who confront unjust power structures and

1 mobilizing to challenge oppressive policies. Through a combination of advocacy, education, and
2 partnerships with grassroots organizations, UUSC promotes economic rights, advances
3 environmental justice, defends civil liberties, and preserves the rights of people in times of
4 humanitarian crisis. UUSC brings this action on behalf of itself and its adversely affected members
5 and staff.

6 34. All Plaintiffs make and receive telephone calls originating within the United States in
7 furtherance of their mission and operations. In particular, Plaintiffs make and receive telephone calls
8 to and from their members, staffs, and constituents, among other groups, in furtherance of their
9 mission and operations, including advancing their political beliefs, exchanging ideas, and
10 formulating strategy and messages in support of their causes.

11 35. Each of the Plaintiffs above that is a membership organization and that brings this
12 action on behalf of its members has members whose communications information has been collected
13 as part of the Associational Tracking Program.

14 36. Defendant NSA is an agency under the direction and control of the Department of
15 Defense that collects, processes, and disseminates signals intelligence. It is responsible for carrying
16 out at least some of the Associational Tracking Program challenged herein.

17 37. Defendant General Keith B. Alexander is the current Director of the NSA, in office
18 since April of 2005. As NSA Director, General Alexander has authority for supervising and
19 implementing all operations and functions of the NSA, including the Associational Tracking
20 Program. General Alexander personally authorizes and supervises the Associational Tracking
21 Program.

22 38. Defendant United States is the United States of America, its departments, agencies,
23 and entities.

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

1 40. Defendant John B. Carlin is the current Acting Assistant Attorney General for
2 National Security. In that position, defendant Carlin participates in the Department of Justice's
3 implementation of the Associational Tracking Program.

4 41. Defendant Federal Bureau of Investigation (FBI) is a component of the Department of
5 Justice that conducts federal criminal investigation and collects domestic intelligence. FBI is
6 responsible for carrying out at least some of the Associational Tracking Program activities
7 challenged herein.

8 42. Defendant Robert S. Mueller is the current Director of the FBI, in office since
9 September of 2001. As FBI Director, defendant Mueller has ultimate authority for supervising and
10 implementing all operations and functions of the FBI, including its participation in the Associational
11 Tracking Program. Defendant Mueller personally authorizes and supervises the FBI's participation
12 in the Associational Tracking Program.

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

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

21 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

22 **STATUTORY BACKGROUND**

23 45. 50 U.S.C § 1861, the codification of section 215 of the USA PATRIOT Act, as
24 amended, is entitled "Access to certain business records for foreign intelligence and surveillance
25 purposes." Section 1861 provides narrow and limited authority for the Foreign Intelligence
26 Surveillance Court (FISC) to issue orders for the production of "any tangible things (including
27 books, records, papers, documents, and other items) for an investigation to obtain foreign
28 intelligence information not concerning a United States person or to protect against international

1 terrorism or clandestine intelligence activities.” The limitations on section 1861 orders include the
2 following:

- 3 • an order may be issued only upon “a statement of facts showing that there are
4 reasonable grounds to believe that the tangible things sought are relevant to an
5 authorized investigation;”
- 6 • the tangible things sought to be produced by an order must be described “with
7 sufficient particularity to permit them to be fairly identified;” and
- 8 • an order “may only require the production of a tangible thing if such thing can be
9 obtained with a *subpoena duces tecum* issued by a court of the United States in aid of
10 a grand jury investigation or with any other order issued by a court of the United
11 States directing the production of records or tangible things.”

12 THE ASSOCIATIONAL TRACKING PROGRAM

13 46. The Associational Tracking Program is electronic surveillance that collects and
14 acquires telephone communications information for all telephone calls transiting the networks of all
15 major American telecommunication companies, including Verizon, AT&T, and Sprint. Every day,
16 the Associational Tracking Program collects information about millions of telephone calls made by
17 millions of Americans. This includes information about all calls made wholly within the United
18 States, including local telephone calls, as well as communications between the United States and
19 abroad.

20 47. Defendants’ Associational Tracking Program collects and acquires call detail records
21 and comprehensive communications routing information about telephone calls. The collected
22 information includes, but is not limited to, session identifying information (e.g., originating and
23 terminating telephone number, International Mobile Subscriber Identity (IMSI) number,
24 International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone
25 calling card numbers, and time and duration of call. Defendants acquire this information through the
26 use of a surveillance device.

27 48. Beginning in 2001, participating phone companies voluntarily provided telephone
28 communications information for the Associational Tracking program to Defendants. Since 2006, the

1 FISC, at the request of Defendants, has issued orders under 50 U.S.C. § 1861 purporting to compel
2 the production of communications information, including communications information not yet in
3 existence, on an ongoing basis, as part of the Associational Tracking Program.

4 49. As an example, attached hereto as Exhibit A, and incorporated herein by this
5 reference, is an Order issued under 50 U.S.C. § 1861 requiring the production of communications
6 information for use in the Associational Tracking Program.

7 50. DNI Clapper has admitted the Order is authentic, as indicated in Exhibit B, attached
8 hereto and incorporated by this reference.

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

17 **BULK COLLECTION, ACQUISITION, AND STORAGE**

18 52. The Associational Tracking Program collects and acquires telephone communications
19 information for all telephone calls transiting the networks of all major American telecommunication
20 companies, including Verizon, AT&T, and Sprint.

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

1 54. Defendants' bulk collection and acquisition of telephone communications information
2 includes, but is not limited to, records indicating who each customer communicates with, at what
3 time, and for how long. The aggregation of this information discloses the expressive, political,
4 social, personal, private, and intimate associational connections among individuals and groups,
5 which ordinarily would not be disclosed to the public or the government.

6 55. Through the Associational Tracking Program, Defendants have collected, acquired,
7 and retained, and continue to collect, acquire, and retain, bulk communications information of
8 telephone calls made and received by Plaintiffs, their members, and their staffs. This information is
9 otherwise private.

10 56. Plaintiffs' associations and political advocacy efforts, as well as those of their
11 members and staffs, are chilled by the fact that the Associational Tracking Program creates a
12 permanent record of all of Plaintiffs' telephone communications with their members and
13 constituents, among others.

14 57. Plaintiffs' associations and political advocacy efforts, as well as those of their
15 members and staffs, are chilled by Defendants' search and analysis of information obtained through
16 the Associational Tracking Program and Defendants' use and disclosure of this information and the
17 results of their searches and analyses.

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

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

1 and retention of the communications information of Plaintiffs, their members, and their staffs is
2 unlawful and invalid.

3 60. Defendants' bulk collection, acquisition, and retention of the telephone
4 communications information of Plaintiffs, their members, and their staffs is done (a) without
5 probable cause or reasonable suspicion to believe that Plaintiffs, their members, and their staffs have
6 committed or are about to commit any crime or engage in any international terrorist activity; (b)
7 without probable cause or reasonable suspicion to believe that Plaintiffs, their members, or their
8 staffs are foreign powers or agents of foreign powers; and (c) without probable cause or reasonable
9 suspicion to believe that the communications of Plaintiffs, their members, and their staffs contain or
10 pertain to foreign intelligence information, or relate to an investigation to obtain foreign intelligence
11 information.

12 61. Defendants, and each of them, have authorized, approved, supervised, performed,
13 caused, participated in, aided, abetted, counseled, commanded, induced, procured, enabled,
14 contributed to, facilitated, directed, controlled, assisted in, or conspired in the Associational Tracking
15 Program and in the collection, acquisition, and retention of the telephone communications
16 information of Plaintiffs, their members, and their staffs. Defendants have committed these acts
17 willfully, knowingly, and intentionally. Defendants continue to commit these acts and will continue
18 to do so absent an order of this Court enjoining and restraining them from doing so.

19 SEARCH

20 62. Through the Associational Tracking Program, Defendants have searched and continue
21 to search communications information of telephone calls made and received by Plaintiffs, their
22 members, and their staffs.

23 63. Plaintiffs' telephone communications information searched pursuant to the
24 Associational Tracking Program was, at the time of search and at all times thereafter, was neither
25 relevant to an existing authorized criminal investigation nor to an existing authorized investigation to
26 protect against international terrorism or clandestine intelligence activities.

27 64. Defendants' searching of the telephone communications information of Plaintiffs is
28 done without lawful authorization, probable cause, and/or individualized suspicion. It is done in

1 violation of statutory and constitutional limitations and in excess of statutory and constitutional
2 authority. Any judicial, administrative, or executive authorization (including any business records
3 order issued pursuant 50 U.S.C. § 1861) of the Associational Tracking Program or of the searching
4 of the communications information of Plaintiffs is unlawful and invalid.

5 65. Defendants' searching of the telephone communications information of Plaintiffs is
6 done (a) without probable cause or reasonable suspicion to believe that Plaintiffs, their members, or
7 their staffs, have committed or are about to commit any crime or engage in any international terrorist
8 activity; (b) without probable cause or reasonable suspicion to believe that Plaintiffs, their members,
9 or their staffs are foreign powers or agents of foreign powers; and (c) without probable cause or
10 reasonable suspicion to believe that Plaintiffs', their members', or their staffs' communications
11 contain or pertain to foreign intelligence information or relate to an investigation to obtain foreign
12 intelligence information.

13 66. Defendants, and each of them, have authorized, approved, supervised, performed,
14 caused, participated in, aided, abetted, counseled, commanded, induced, procured, enabled,
15 contributed to, facilitated, directed, controlled, assisted in, or conspired in the Associational Tracking
16 Program and in the search or use of the telephone communications information of Plaintiffs, their
17 members, and their staff. Defendants have committed these acts willfully, knowingly, and
18 intentionally. Defendants continue to commit these acts and will continue to do so absent an order of
19 this Court enjoining and restraining them from doing so.

20 **COUNT I**

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

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

25 68. 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.
28

69. By their acts alleged herein, Defendants have violated and are violating the First Amendment free speech and free association rights of Plaintiffs, their members, and their staffs, including the right to communicate anonymously, the right to associate privately, and the right to engage in political advocacy free from government interference.

70. By their acts alleged herein, Defendants have chilled and/or threaten to chill the legal associations and speech of Plaintiffs, their members, and their staffs by, among other things, compelling the disclosure of their political and other associations.

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

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

COUNT II

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

73. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 66 of this complaint, as if set forth fully herein.

74. Plaintiffs have a reasonable expectation of privacy in their telephone communications, including in their telephone communications information.

75. By the acts alleged herein, Defendants have violated Plaintiffs' reasonable expectations of privacy and denied Plaintiffs their right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, including, but not limited to, obtaining *per se* unreasonable general warrants. Defendants have further violated

1 Plaintiffs' rights by failing to apply to a court for, and for a court to issue, a warrant prior to any
2 search and seizure as guaranteed by the Fourth Amendment.

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

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

12 **COUNT III**

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

15 78. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1
16 through 66 of this complaint, as if set forth fully herein.

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

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

27 81. Defendants collect, acquire, retain, search, and use the bulk telephone communications
28 information of Plaintiffs, their members, and their staff without making any showing of any

1 individualized suspicion, probable cause, or other governmental interest sufficient or narrowly
2 tailored to justify the invasion of Plaintiffs' due process right to informational privacy.

3 82. Defendants collect and acquire the bulk telephone communications information of
4 Plaintiffs, their members, and their staff under, *inter alia*, Section 215 of the USA-PATRIOT Act
5 (50 U.S.C. § 1861).

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

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

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

24 86. The secret legal interpretation of 50 U.S.C. § 1861 used in the Associational Tracking
25 Program and related surveillance programs causes section 1861 to be unconstitutionally vague in
26 violation of the Fifth Amendment and the rule of law. The statute on its face gives no notice that it
27 could be construed to authorize the bulk collection of telephone communications information for use
28 in future investigations that do not yet exist.

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

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

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

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

COUNT IV

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

91. Plaintiffs repeat and incorporate herein by reference the allegations in paragraph 1 through 66 of this complaint, as if set forth fully herein.

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

93. Defendants' Associational Tracking Program and the collection, acquisition, retention, searching, and use of the telephone communications records of Plaintiffs, their members, and their staff exceed the conduct that may be lawfully authorized by an order issued under 50 U.S.C § 1861.

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

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

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

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

COUNT V

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

98. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 97 of this complaint, as if set forth fully herein.

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

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

1 101. Plaintiffs seek an order directing the return of their telephone communications
2 information in the possession, custody, or control of Defendants, their agents, successors, and
3 assigns, and all those in active concert and participation with them.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court:

- 6 1. Declare that the Program as alleged herein violates without limitation Plaintiffs'
7 rights under the First, Fourth, and Fifth Amendments to the Constitution; and their
8 statutory rights;
 - 9 2. Award to Plaintiffs equitable relief, including without limitation, a preliminary and
10 permanent injunction pursuant to the First, Fourth, and Fifth Amendments to the
11 United States Constitution prohibiting Defendants' continued use of the Program,
12 and a preliminary and permanent injunction pursuant to the First, Fourth, and Fifth
13 Amendments requiring Defendants to provide to Plaintiffs an inventory of their
14 communications, records, or other information that was seized in violation of the
15 First, Fourth, and Fifth Amendments, and further requiring the destruction of all
16 copies of those communications, records, or other information within the possession,
17 custody, or control of Defendants.
 - 18 3. Award to Plaintiffs reasonable attorneys' fees and other costs of suit to the extent
19 permitted by law.
 - 20 4. Order the return and destruction of their telephone communications information in
21 the possession, custody, or control of Defendants, their agents, successors, and
22 assigns, and all those in active concert and participation with them.
 - 23 5. Grant such other and further relief as the Court deems just and proper.
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27
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1 DATED: July 16, 2013

Respectfully submitted,

2 

3 CINDY COHN
4 LEE TIEN
5 KURT OPSAHL
6 MATTHEW ZIMMERMAN
7 MARK RUMOLD
8 DAVID GREENE
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18 KEKER & VAN NEST, LLP

19 ARAM ANTARAMIAN
20 LAW OFFICE OF ARAM ANTARAMIAN

21 Attorneys for Plaintiffs

22 **JURY DEMAND**

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

25 DATED: July 16, 2013

Respectfully submitted,

26 

27 CINDY COHN
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Attorneys 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

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.

-- Remainder of page intentionally left blank. --

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



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. *BCQ*

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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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