

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY
INFORMATION CENTER,
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)
)

Plaintiff,
)
)

v.)

U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, et al.,
)
)
)

Defendants.
)

Civil Action No. 12-cv-00127 (BJR)

**DEFENDANT’S SUPPLEMENTAL BRIEF
IN RESPONSE TO THE COURT’S MARCH 17, 2014 MINUTE ORDER, AND IN
FURTHER SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

By Minute Order dated March 11, 2014, the Court directed defendants to provide an update regarding their positions on plaintiff’s FOIA requests, and, specifically, whether the Government continues to rely on Freedom of Information Act (“FOIA”) Exemption 7(A) to withhold records in this case. Defendants, by and through undersigned counsel, hereby respectfully respond.

First, defendants’ general position regarding the FOIA requests in this matter, which were submitted by plaintiff Electronic Privacy Information Center (“EPIC”) to three Department of Justice (“DOJ”) components, has not changed. EPIC’s requests constitute an improper attempt to obtain information regarding ongoing law enforcement investigations. Defendants articulated this view previously, in their motion for summary judgment. See Defs.’ Mot. 1 (Dkt. No. 12-1) (“EPIC’s request is a quintessential example of an improper attempt to use FOIA to force the

Government to open its investigative files to public inspection.”). In response, EPIC stated that it “is not generally seeking records about individuals who may be the target of criminal investigations, it is seeking records about individuals who are exercising their Constitutional rights.”¹ Pl.’s Opp’n/Mot. 1. Although no one is being targeted for “exercising their Constitutional rights,” *see* First Hardy Decl. (Dkt. No. 12-2) ¶ 19 n.3,² Defendants generously interpreted plaintiff’s FOIA requests when searching for responsive records and processing records. Now that plaintiff’s motion for summary judgment has at least partially clarified the scope of EPIC’s requests, defendants are of the view that many, if not most or even all, of the records processed by defendants may have actually been non-responsive to plaintiff’s requests.

Second, the Court is correct that Exemption 7(a) is “temporal in nature,” and that developments in investigations, and the passage of time, can impact the continued viability of that exemption. *See, e.g., Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Justice*, No. 12-5223, 2014 WL 1284811 (D.C. Cir. Apr. 1, 2014). At this time, as discussed further below, defendants confirm that Exemption 7(a) continues to apply to their records because the criminal investigation of the DOJ and FBI, to which those records relate, remains open and pending. The harms described in the original declarations submitted with defendants’ motion for summary judgment continue to apply, and Exemption 7(A) remains applicable.

¹ Plaintiff further conceded that it “has no objection to the withholding” of “records that concern the investigation of individuals suspected of disclosing classified information and are wholly exempt.” Pl.’s Reply 2-3.

² The indices submitted with the *ex parte, in camera* declarations of NSD’s declarant, Mark A. Bradley, and CRM’s declarant, John E. Cunningham III, also show that the processed records pertain to criminal investigations. *See* Second Bradley Decl. (filed under seal, with Notice of Filing at Dkt. No. 11), Second Cunningham Decl. (filed under seal, with Notice of Filing at Dkt. No. 11).

BACKGROUND

In June 2011, EPIC sent the FOIA requests in this matter to three separate Department of Justice components, (1) the Federal Bureau of Investigation (“FBI”), (2) the Criminal Division (“CRM”), and (3) the National Security Division (“NSD”) (collectively, “defendants”). The requests seek four categories of records concerning the Government’s investigation into WikiLeaks:

1. All records regarding any individuals targeted for surveillance for support for or interest in WikiLeaks;
2. All records regarding lists of names of individuals who have demonstrated support for or interest in WikiLeaks;
3. All records of any agency communications with Internet and social media companies including, but not limited to Facebook and Google, regarding lists of individuals who have demonstrated, through advocacy or other means, support for or interest in WikiLeaks; and
4. All records of any agency communications with financial services companies including, but not limited to Visa, MasterCard, and PayPal, regarding lists of individuals who have demonstrated, through monetary donations or other means, support or interest in WikiLeaks.

See, e.g., First Hardy Decl., Ex. A (request to FBI) at 3.1.

EPIC filed its complaint on January 25, 2012 (Dkt. No. 1), and defendants answered the complaint on March 23, 2012 (Dkt. No. 4). On January 31, 2013, defendants moved for summary judgment (Dkt. No. 12). EPIC cross-moved for summary judgment on March 4, 2013 (Dkt. No. 15). The materials previously submitted by defendants in connection with their motion for summary judgment provide additional information regarding the background of the FOIA requests, defendants’ searches for responsive records, and the processing of identified records. *See* Defs.’ Mot. 2-4, 6-8 (Dkt. No. 12-1); Defs.’ Stmt. of Material Facts (Dkt. No. 12-5); Defs.’

Reply/Opp'n 2-3 (Dkt. No. 20); First Hardy Decl. ¶¶ 5-21 (Dkt. No. 12-2); First Bradley Decl. ¶¶ 4-10 (Dkt. No. 12-3); First Cunningham Decl. ¶¶ 6-10 (Dkt. No. 12-4).

On March 11, 2014, the Court issued a Minute Order directing defendants to submit the instant supplemental brief. The Minute Order states:

A year has passed since the briefing on the cross motions for summary judgment (Dkt. Nos. 12 and 15) and the motion for leave to file *ex parte* and *in camera* exhibits (Dkt. No. 10) was filed. The Court takes judicial notice that events have transpired during that time that may cause the government's position to have changed. Therefore, the Court instructs the government to update its position regarding Plaintiff's FOIA request, particularly with respect to the government's invocation of exemption 7(A).

The Court administratively closed the pending cross-motions for summary judgment, as well as defendant's motion for leave to file *ex parte* and *in camera* exhibits (Dkt. No. 10) and plaintiff's motion for *in camera* review (Dkt. No. 17), and indicated that it will reopen the motions when the parties complete the additional briefing. *See* March 11, 2014 Minute Order; March 31, 2014 Minute Order.

In response to the Court's Minute Order, defendants submit this supplemental brief. Defendants also submit supplemental declarations from the FBI, CRM, and NSD. *See* Third Hardy Decl. (Dkt. No. 33-1); Third Bradley Decl. (Dkt. No. 33-2); Third Cunningham Decl. (Dkt. No. 33-3). In addition, defendants are separately filing a motion seeking leave to file under seal, *ex parte*, and *in camera*, a supplemental declaration from the FBI that provides additional information that defendants are unable to state on the public record due to the ongoing nature of the Department of Justice's criminal investigation. These declarations provide an update to the Court, and also further support defendants' motion for summary judgment. Defendants provide

the following updated chart of declarations supporting their motion for summary judgment. *Cf.* Defs.' Mot. 4.

<u>Exhibit</u>	<u>Dkt. No.</u>	<u>Component</u>	<u>Declarant</u>
Exhibit 1	12-2	FBI	Declaration of David M. Hardy [First Hardy Decl.]
Exhibit 2	Mot. for Leave at Dkt. No. 10; Notice of Filing at Dkt. No. 11	FBI	Ex Parte and In Camera Declaration of David M. Hardy (addressing Exemptions 3 and 7(D)) [Second Hardy Decl.]
Exhibit 3	12-3	NSD	Declaration of Mark A. Bradley [First Bradley Decl.]
Exhibit 4	Mot. for Leave at Dkt. No. 10; Notice of Filing at Dkt. No. 11	NSD	<i>Ex Parte</i> and <i>In Camera</i> Declaration of Mark A. Bradley (addressing NSD's search and Exemptions 3, 6, 7(A), and 7(C)) [Second Bradley Decl.]
Exhibit 5	12-4	CRM	Declaration of John E. Cunningham III [First Cunningham Decl.]
Exhibit 6	Mot. for Leave at Dkt. No. 10; Notice of Filing at Dkt. No. 11	CRM	<i>Ex Parte</i> and <i>In Camera</i> Declaration of John E. Cunningham III (addressing Exemption 3) [Second Cunningham Decl.]
Exhibit 7	33-1	FBI	Third Overall and Second Public Declaration of David M. Hardy [Third Hardy Decl.]
Exhibit 8	33-2	NSD	Declaration of Mark M. Bradley [Third Bradley Decl.]
Exhibit 9	33-3	CRM	Third Overall and Second Public Declaration of John E. Cunningham III [Third Cunningham Decl.]
Exhibit 10	34-1 (attached to motion for leave to file under seal)	FBI	Fourth Overall and Second <i>In Camera</i> , <i>Ex Parte</i> Declaration of Mark A. Bradley [Fourth Bradley Decl.]

DISCUSSION/UPDATE

1. Events That Have Transpired During the Past Year

The Court's Minute Order referenced "events [that] have transpired" during the past year, without specifying what event or events the Court had in mind. Defendants have identified a number of developments that are potentially relevant, at least contextually, to the instant case:

(a) The DOJ's and FBI's criminal investigation of unauthorized disclosures to Wikileaks remains open and pending.

(b) The Department of Defense held a court-martial trial of Army Pfc. Bradley Manning, now known as Chelsea Manning. On July 30, 2013, Pfc. Manning was convicted on twenty specifications related to the misappropriation of intelligence documents she sent to the WikiLeaks organization. On, Aug. 21, 2013, Manning was sentenced to thirty-five years in prison. Her appeal is currently pending.

(c) In the FOIA requests at issue here, EPIC referenced a lawsuit filed on January 26, 2011, by the Electronic Frontier Foundation and others in the Eastern District of Virginia. *See, e.g.,* First Hardy Decl., Ex. A (request to FBI) at 2. The Fourth Circuit issued an opinion in that case on January 25, 2013, just prior to the filing of the cross-motions for summary judgment in this case.³ *See In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283 (4th Cir. 2013). Upon remand, the district court issued an Order, dated May 6, 2013, in which it

³ The Fourth Circuit held (a) that the First Amendment does not provide the public with a right to access orders issued under 18 U.S.C. § 2703(d) and related documents at the pre-grand jury phase of an ongoing criminal investigation, and (b) that "the common law right to access such documents is presently outweighed by countervailing interests." *In re U.S.*, 707 F.3d at 286. In its opinion, the Fourth Circuit acknowledged the "Government's interests in maintaining the secrecy of its investigation, [and in] preventing potential subjects from being tipped off, or altering behavior to thwart the Government's ongoing investigation." The Court of Appeals agreed with the lower court that those interests outweighed the common law presumption of access to judicial records. *Id.* at 293.

found that “unsealing of the documents at this time would damage an ongoing criminal investigation.” *In re 2703(D) Order*, No. 11-dm-00003-TCB-LO (E.D. Va. May 6, 2013) (ordering that documents remain sealed) (attached, at Dkt. No. 33-4). The Court ordered that the documents at issue shall remain sealed. The May 6, 2013 is the most recent publicly docketed decision in that case. *See Id.* CM/ECF Docket Report (generated April 25, 2014) (attached, at Dkt. No. 33-5).

(d) EPIC’s reply brief in support of its motion for summary judgment describes a lawsuit filed by David House. Pl’s Reply 6-7 (referencing *House v. Napolitano*, No. 11-10852 (D. Mass)). EPIC attempts to establish facts it says are relevant to this case by relying on the factual recitation of the district court’s opinion at the motion to dismiss stage (when facts asserted in a complaint are taken as true, and viewed in the light most favorable to the plaintiff). Within the past year, there has been a development in that case. On May 23, 2013, plaintiff filed a stipulation of dismissal with prejudice. *See* Stip. of Dismissal (attached, at Dkt. No. 33-6).

2. Exemption 7(A) Continues to Apply

Exemption 7(A) protects “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Defendants invoked Exemption 7(A) to protect records in this case so as not to adversely affect the DOJ’s and FBI’s active and pending investigation(s) of the unauthorized disclosure of classified information that was published by the WikiLeaks website, any prosecutions that may result from that investigation, and/or the then-pending trial of Army Pfc. Manning. *See* Third Hardy Decl. ¶ 5; *see also* First Hardy Decl. ¶¶ 23, 25; First Bradley Decl. ¶ 13; First Cunningham Decl. ¶¶ 12-19.

There are at least two separate categories of “enforcement proceedings” relevant to defendants’ Exemption 7(A) analysis, and those two separate categories of law enforcement proceedings are progressing on different tracks. One set consists of those enforcement proceedings directly related to the military prosecution of Army Pfc. Manning, which falls within the jurisdiction of the Department of Defense (“DoD”). Since this case was originally briefed, Manning was tried and convicted by a military court, as noted above. The court-martial remains ongoing, in the appellate phase.

The second type of enforcement proceeding, generally, is the DOJ’s civilian criminal/national security investigation(s) into the unauthorized disclosure of classified information that was published on the WikiLeaks website. The investigation of the unauthorized disclosure is a multi-subject investigation and is still active and ongoing. While there have been developments in the investigation over the last year, the investigation generally remains at the investigative stage. It is this second category of enforcement proceeding that is actually more central to defendants’ Exemption 7(A) withholdings in this case.

It is well-established that although Exemption 7(A) is temporal in nature, it nevertheless remains viable throughout the duration of long-term investigations. *See, e.g., Juarez v. Dep’t of Justice*, 518 F.3d 54, 58 (D.C. Cir. 2008) (recognizing that investigation that was pending in 2002 remained ongoing in 2008, even though the investigating agency had interviewed the subject of the investigation several years prior to 2008, and had—according to the subject—“showed no further interest in [her] participation in their investigation”); *Dickerson v. Dep’t of Justice*, 992 F.2d 1426, 1431 (6th Cir. 1993) (affirming district court’s conclusion in 1991 and 1992 that FBI’s investigation into 1975 disappearance of Jimmy Hoffa remained open and pending).

Here, defendants have considered whether developments in each of the two categories of Wikileaks-related enforcement proceedings, described above, altered their prior conclusions that disclosure of any responsive information in this case would adversely affect the government's continuing investigation of the unauthorized disclosure of classified information, any prospective prosecutions that could result from the FBI's investigation, or the Manning appeal. All three defendant-components have concluded that that no materials can be released at this time without jeopardizing the DOJ's pending or prospective civilian enforcement proceedings, for the reasons discussed in the declarations submitted in connection with defendant's motion for summary judgment. *See* Third Hardy Decl. ¶¶ 7-9; Fourth Hardy Decl. ¶¶ 7-8; Third Bradley Decl. ¶ 4; Third Cunningham Decl. ¶ 5.

There may be less risk that disclosure of defendants' records could jeopardize DoD's court-martial of Manning, since that proceeding has already progressed through trial and sentencing, but DoD's enforcement proceeding remains on appeal, and premature disclosure of related investigatory files could jeopardize proceedings on remand if there is any reversal and remand for new trial. Courts have recognized the continued viability of Exemption 7(A) while an enforcement proceeding is pending at the appellate stage. *See, e.g., Kidder v. FBI*, 517 F. Supp. 2d 17, 27 (D.D.C. 2007) (reiterating that "pending appeal of a criminal conviction qualifies as a pending or prospective law enforcement proceeding for purposes of Exemption 7(A)").

Moreover, as the Third Hardy Declaration explains, the Manning court-martial is *related* to the ongoing DOJ and FBI criminal investigation. *See* Third Hardy Decl. ¶¶ 6, 7. Even if/when the court-martial proceeding were to end, defendants could still rely on Exemption 7(A) to protect DOJ's related, pending investigation. Courts have upheld the continued use of

Exemption 7(A) after an enforcement proceeding is closed where information from the closed law enforcement proceeding will be used again in “related” proceedings, *i.e.*, other pending or prospective law enforcement proceedings, for example, when charges are pending against additional defendants. *See, e.g., DeMartino v. FBI*, 577 F. Supp. 2d 178, 182 (D.D.C. 2008) (explaining that case remains open and pending because co-defendant is “scheduled to be retried” and “other unindicted co-conspirators” remain at large). Defendants note that many of the trial records in the court-martial proceeding remain under seal. Defendants have consulted with DoD to determine whether any of the publicly-released documents relating to the court martial are documents that originated from the FBI, and DoD has indicated to defendants that no FBI records are included in the publicly released documents. FBI is double checking that this is so, and will promptly inform the Court if any of its records that are also responsive to EPIC’s FOIA request were publicly released by DoD.

3. Defendants’ Positions Regarding the Other Exemptions Have Not Changed

Defendants have also considered whether the additional exemptions previously cited continue to apply and has concluded that responsive information in this case also remains exempt pursuant to FOIA Exemptions 1, 3, 5, 6, 7(C), 7(D), 7(E), and 7(F), 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(5), (b)(6) and (b)(7)(C) – (F), for the reasons previously explained in defendants’ motion for summary judgment briefing and the related declarations. *See* Defs.’ Mot. 16-34; Defs.’ Reply/Opp’n 14-22.

CONCLUSION

For the reasons stated above, and in defendants’ earlier briefing on summary judgment, the Court should grant defendants’ summary judgment motion, and should enter final judgment for defendants.

Dated: April 25, 2014

Respectfully submitted,

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Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ Lisa Zeidner Marcus
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Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION)
CENTER,)

Plaintiff,)

v.)

U.S. DEPARTMENT OF JUSTICE CRIMINAL)
DIVISION, *et al.*,)

Defendants.)

Civil Action No. 12-cv-0127 (RWR)

THIRD OVERALL AND
SECOND PUBLIC DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the United States Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 226 employees who staff a total of ten (10) units and two (2) field operational service center units

whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to Federal Bureau of Investigation (“FBI”) records and information pursuant to the FOIA, 5 U.S.C. § 552; Privacy Act of 1974; Executive Order (“E.O.”) 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by E.O. 13,526, 75 Fed. Reg. 707 (2010), and the preparation of declarations in support of FOIA Exemption 1 claims asserted under the FOIA, 5 U.S.C. § 552(b)(1). I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13,526 §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI’s response to the FOIA request of plaintiff, Electronic Privacy Information Center (“EPIC”), which seeks access to certain FBI records about “individuals targeted for surveillance for support for or interest in WikiLeaks.”

(4) On March 11, 2014, the Court issued a Minute Order in this matter noting that a year has passed since the parties’ cross motions for summary judgment and defendants’ motion for leave to file *ex parte* and *in camera* exhibits were filed. Taking judicial notice that events have transpired that may have caused the defendants’ position to have changed, the Court instructed defendants to submit a supplemental briefing, particularly with respect to their

invocation of Exemption 7(A). The FBI submits this declaration in response to the March 11, 2014 Minute Order and in further support of the government's motion for summary judgment in this case. This is my third declaration overall and second public declaration in this case, and it incorporates and supplements my prior declarations and my fourth overall and second *in camera*, *ex parte* declaration. See ECF No. 12-1, First Public Hardy Decl.; ECF No. 11, Notice of Filing Second Overall and First *In Camera*, *Ex Parte* Hardy Declaration; see also Fourth Overall and Second *In Camera*, *Ex Parte* Hardy Declaration.

(5) As explained in my first public declaration, the FBI invoked Exemption 7(A) to protect responsive records in this case so as not to adversely affect its active and pending investigation of the unauthorized disclosure of classified information that was published by the WikiLeaks website, any prosecutions that may result from the FBI's investigation, and/or the then-pending trial of Private Bradley Manning.¹ See ECF No. 12-1, First Public Hardy Decl., at ¶¶ 23 and 25.

(6) There are at least two separate categories of law enforcement proceedings here, which are progressing on different tracks.

(a) The first type of law enforcement proceeding is the military prosecution of Manning, which falls within the jurisdiction of the Department of Defense ("DoD"). Since this case was originally briefed, Manning was tried and convicted by a military court of 20 counts stemming from her unauthorized disclosure of classified information and sentenced to 35 years in prison. Her appeal is currently pending.

(b) The second type of enforcement proceeding, generally, is the Department of Justice's ("DOJ's") civilian criminal/national security investigation(s) into the unauthorized

¹ Now known as Chelsea Manning.

disclosure of classified information that was published on the WikiLeaks website. The FBI's investigation of the unauthorized disclosure is a multi-subject investigation and is still active and ongoing.

(7) The FBI considered whether any changes in either (a) the status of the FBI's civilian investigation of the unauthorized disclosures of classified information or (b) Manning's military case altered its prior conclusion that disclosure of any responsive information in this case would adversely affect the government's continuing investigation of the unauthorized disclosure of classified information, any prospective prosecutions that could result from the FBI's investigation, or the Manning appeal. However, because the FBI's investigation remains ongoing and could result in one or more prosecutions, and because the Manning case is not concluded but instead has progressed to the appeal phase, the FBI has concluded that no materials can be released at this time without jeopardizing DOJ's pending or prospective civilian enforcement proceedings, for the reasons discussed in my first public declaration and first *in camera, ex parte* declaration in this case.²

(8) Specifically, as I previously explained, disclosure of documents falling within the category of "Evidentiary/Investigative Materials" would interfere with pending or prospective enforcement proceedings in the following ways. *See* ECF No. 12-1, First Public Hardy Decl., at ¶¶ 29 – 32.

(a) Disclosure of confidential source statements could subject them to retaliation, intimidation, or physical or mental harm. This would have a chilling effect on these investigations and any future prosecutions resulting from these cases, inasmuch as potential

² While we do not believe that the change in status of the military enforcement proceeding against Manning affects DOJ's application of Exemption 7(A) to the FBI's pending investigative file, DOJ is willing to double-check that no documents publicly released in the military proceeding against Manning are DOJ documents that are responsive to plaintiff's request and that can be segregated and released to plaintiff.

witnesses and/or sources might fear exposure and reprisals from the subjects of these investigations and/or from other individuals. Implicit in conducting interviews in investigations of this nature is the notion that a source's identity and the information he/she/it provided will be afforded confidentiality. The FBI goes to great lengths to protect and maintain sources' confidentiality because it is an integral part of successful investigations and prosecutions. The release of source statements would disrupt and harm ongoing investigative actions and/or pending or prospective prosecutions.

(b) Disclosure of documents reflecting information exchanged between the FBI and its law enforcement partners would disclose evidence, investigative information, and criminal intelligence developed by agencies that have cooperated with and provided information to the FBI, and that are still doing so, in the pending investigations at this point in the investigative process would reveal the scope and focus of the investigations; identify and tip off individuals of interest to law enforcement; and provide suspects or targets the opportunity to destroy evidence or alter their behaviors to avoid detection. Inherent in the cooperative effort between the FBI and other law enforcement agencies is the mutual understanding that information provided to the FBI by these agencies will not be prematurely released. This information was gathered, and is continuing to be gathered, to help identify subjects, suspects, and/or other individuals of potential investigative interest; to identify and assist in locating witnesses and/or confidential sources; and to further the progress of the investigations.

(c) Finally, disclosure of documentary evidence being gathered in the ongoing investigations, or information that discusses, describes, or analyzes the documentary evidence, would undermine any pending or prospective prosecutions by prematurely revealing the scope and focus of the investigations, as well as the subjects of and persons of investigative interest in

those investigations. Once subjects and persons of interest become aware of the FBI's attention, they are able to take defensive actions to conceal their activities, elude detection, and/or suppress or fabricate evidence. Additionally, disclosure of documentary evidence and/or information concerning documentary evidence also could reasonably lead to the identification of the sources of the evidence. This too would adversely impact the ongoing investigations, and any pending or prospective prosecutions, because it could result in possible intimidation of or harm to those witnesses and sources. This evidence and information about this evidence in other documents is pertinent and integral to the FBI's ongoing investigation and any potential future prosecutions.

(9) Additionally, as I previously explained, disclosure of documents falling within the category of "Administrative Materials" would interfere with pending or prospective enforcement proceedings in the following ways. *See* ECF No. 12-1, First Public Hardy Decl., at ¶¶ 33 – 38.

(a) In many instances, administrative information is contained at the beginning or end of correspondence or documents that fall within the Investigative/Evidentiary Material category, such that release of the administrative information would also reveal the investigative interests of the FBI and could enable suspects, targets, and individuals of interest to the FBI to discern a "road map" of the investigations.

(b) Disclosure of reporting communications would interfere with pending or prospective enforcement proceedings because they have the potential to reveal or confirm the cooperation of other Government agencies in the investigations, and they are replete with detailed information about the FBI's investigative activities, potential witnesses/sources to be interviewed, background information about third party individuals, the origins of information connecting individuals to the investigations, and individuals' connections to subjects and individuals of investigative interest to the FBI. Consequently, release of this information would

prematurely reveal the nature and scope of these active and ongoing investigations by revealing the investigative steps taken to obtain witness and source interviews; techniques and investigative methods used to compile and/or solicit information from various sources; and any potential or perceived challenges in the investigations.

(c) Moreover, disclosure of other administrative documents would reveal the identities of sources or investigative methods or activities that were and are being employed by the FBI in the pending investigations, the premature disclosure of which could undermine the pending investigations as well as pending and prospective prosecutions by providing information useful in identifying witnesses and ascertaining investigative strategies and items of evidence, all of which could allow the targets of the investigation to evade detection or circumvent enforcement efforts.

(d) Finally, releasing administrative instructions would disclose specific investigative procedures employed in these investigations. Release of this information would thus permit subjects or individuals of investigative interest to the FBI to anticipate law enforcement actions and to alter, destroy, or fabricate evidence.

(10) The FBI has also considered whether the additional exemptions previously cited continue to apply and has concluded that responsive information in this case also remains exempt pursuant to FOIA Exemptions 1, 3, 5, 6, 7(C), 7(D), 7(E), and 7(F), 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(5), (b)(6) and (b)(7)(C) – (F), for the reasons previously explained in my first public and *in camera*, *ex parte* declarations in this case.

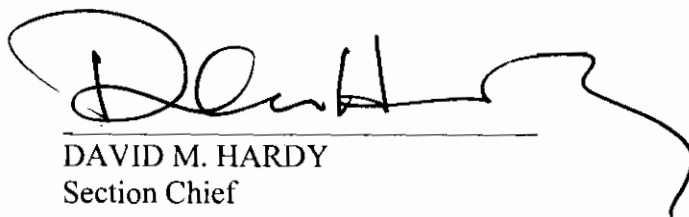
CONCLUSION

(11) The FBI has carefully considered its positions regarding the withholding of responsive documents in this case in light of the passage of time since this case was originally

briefed. The FBI has concluded circumstances have not changed substantially enough to alter its determination that release of any information responsive to plaintiff's FOIA request could reasonably be expected to interfere with the FBI's pending civilian investigation of the unauthorized disclosure of classified information that was subsequently published on the WikiLeaks website, as well as any civilian prosecutions that may result from the investigation and potentially Manning's pending military appeal. And as previously noted, withholding continues to be warranted on the basis of other exemptions as well. Once all exemptions are considered and applied, there is no reasonably segregable information that can be released at this time.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of April, 2014.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ELECTRONIC PRIVACY)	
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Plaintiff,)	
v.)	Civil Action No. 1:12-00127-BJR
)	
U.S. DEPARTMENT OF JUSTICE, et.)	
al.)	
Defendants.)	
<hr/>)	

DECLARATION OF MARK A. BRADLEY

I, Mark A. Bradley, declare the following to be a true and correct statement of facts:

1. I am the Director of the Freedom of Information Act (“FOIA”) and Declassification Unit of the Office of Law and Policy in the National Security Division (“NSD”) of the United States Department of Justice (“DOJ” or “Department”). NSD is a component of the Department which formally began operations on October 2, 2006, by inter alia, consolidating the resources of the Office of Intelligence Policy and Review (“OIPR”) and the Criminal Division’s Counterterrorism (“CTS”) and Counterespionage Section (“CES”).

2. In my capacity as Director of the FOIA and Declassification Unit, I supervise the unit that responds to requests for access to NSD records and information pursuant to the FOIA, 5 U.S.C. § 552 and the Privacy Act of 1974. The statements contained in this declaration are based upon information provided to me in the course of my official duties.

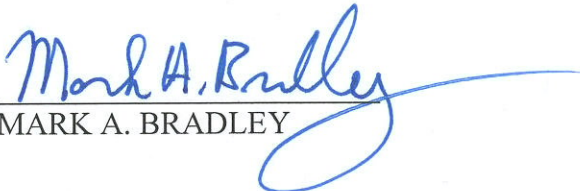
3. On March 11, 2014, the Court issued a Minute Order in this matter noting that a year had passed since the parties’ cross motions for summary judgment and defendants’ motion for leave to file *ex parte* and *in camera* exhibits were filed. Taking judicial notice that events have transpired that may have caused the defendants’ position to have changed, the Court

instructed defendants to submit a supplemental briefing, particularly with respect to their invocation of Exemption 7(A). NSD submits this declaration in response to the March 11, 2014 Minute Order and in further support of the government's motion for summary judgment in this case. This is my third declaration overall and my second public declaration in this case, and it incorporates and supplements my prior public declaration and *ex parte* and *in camera* declaration. *See* ECF No. 12-3, Declaration of Mark A. Bradley; *see also* ECF No. 11, Notice of Filing *Ex Parte* and *In Camera* Declaration of Mark A. Bradley.

4. As explained in my first public declaration, NSD invoked Exemption 7(A) to protect responsive records in this case so as not to adversely affect the Department's ongoing law enforcement investigation into the unauthorized disclosure of classified information that resulted in the publication of materials on the WikiLeaks website. *See* ECF No. 12-3, Declaration of Mark A. Bradley, at ¶¶ 11-16. In response to the Court's Minute Order of March 11, 2014, I have conferred with a DOJ attorney who works on the investigation, and s/he has confirmed that this investigation remains open and pending, and therefore Exemption 7(A) remains applicable to all documents and records generated in connection with this case. Having confirmed that my prior declarations present the position of NSD with regard to EPIC's FOIA requests, and also that the previously articulated position remains current, I incorporate by reference my prior declarations, and respectfully direct the Court to my prior declarations for additional explanation of why Exemption 7(A) applies.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April, 2014.


MARK A. BRADLEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ELECTRONIC PRIVACY
INFORMATION CENTER,**

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, *et.*

al.

Defendants.

Civil Action No. 1:12-00127-BJR

**THIRD OVERALL, AND SECOND PUBLIC
DECLARATION OF JOHN E. CUNNINGHAM III**

I, John E. Cunningham III, declare the following to be a true and correct statement of facts:

1. I am a Trial Attorney in the U.S. Department of Justice (DOJ or Department) Criminal Division (CRM), an am currently assigned to the Office of Enforcement Operations, Freedom of Information Act/Privacy Act (FOIA/PA) Unit, where I have worked since November 2011. I have been employed as a Trial Attorney with DOJ since October 1998. From October 1998 to November 2011, I was employed by the Fraud Section of the Criminal Division.

2. I am responsible for providing litigation support and assistance to DOJ Assistant United States Attorneys and Civil Division Trial Attorneys who represent the Department in lawsuits filed in federal court under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006 & IV 2010), and the Privacy Act ("Privacy Act" or "PA"), 5 U.S.C. § 552a, stemming from requests for CRM records. My duties include reviewing processing files compiled by CRM in responding to FOIA/PA requests in order to determine whether searches for records were properly conducted, and whether decisions to withhold or release CRM records were in accordance with the FOIA and PA, as well as DOJ FOIA and PA regulations at 28 C.F.R.

§§ 16.1 *et seq.* and §§ 16.40 *et seq.* If searches are incomplete and/or records have not been processed, I ensure that searches are completed, and/or records are processed. Then, I take the lead in the completion of any pending searches or processing of CRM documents. I regularly consult with the Acting Chief of the FOIA/PA Unit, the Supervisory FOIA Specialist, and other members of the FOIA/PA Unit about CRM's searches and processing of FOIA/PA requests.

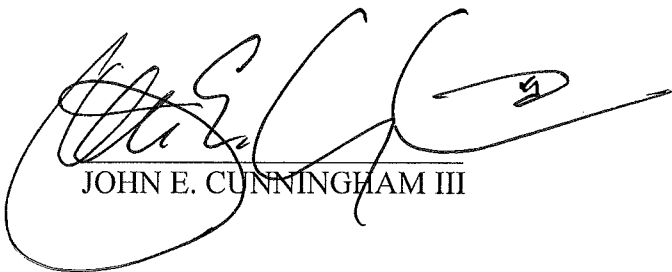
3. Due to the nature of my official duties, I am familiar with the FOIA request of the plaintiff, Electronic Privacy Information Center ("EPIC"), at issue in this litigation. I was involved in the processing of this FOIA request, including drafting the CRM's response to this FOIA request. Specifically, I am aware of CRM's response to plaintiff's FOIA request, which seeks access to certain CRM records about "individuals targeted for surveillance for support for or interest in WikiLeaks."

4. On March 11, 2014, the Court issued a Minute Order in this matter noting that a year had passed since the parties' cross motions for summary judgment and defendants' motion for leave to file *ex parte* and *in camera* exhibits were filed. Taking judicial notice that events have transpired that may have caused the defendants' position to have changed, the Court instructed defendants to submit a supplemental briefing, particularly with respect to their invocation of Exemption 7(A). CRM submits this declaration in response to the March 11, 2014 Minute Order and in further support of the government's motion for summary judgment in this case. This is my third declaration overall and my second public declaration in this case, and it incorporates and supplements my prior public declaration and *ex parte* and *in camera* declaration. *See* ECF No. 12-4, First Declaration of John E. Cunningham III; *see also* ECF No. 11, Notice of Filing *Ex Parte* and *In Camera* Declaration (Second Overall Declaration) of John E. Cunningham III.

5. As explained in my first public declaration, CRM invoked Exemption 7(A) to protect responsive records in this case so as not to adversely affect its ongoing law enforcement investigation into the unauthorized disclosure of classified information that resulted in the publication of materials on the WikiLeaks website. *See* ECF No. 12-4, First Declaration of John E. Cunningham III, at ¶¶ 11 and 12. In response to the Court's Minute Order of March 11, 2014, I have conferred with DOJ attorneys who directly work on the investigation and have confirmed that this investigation remains open and pending, and therefore Exemption 7(A) remains applicable to all documents and records generated in connection with this case. Having confirmed that my prior declarations present the position of CRM with regard to EPIC's FOIA requests, and also that the previously articulated position remains current, I incorporate by reference my prior declarations, and respectfully direct the Court to my prior declarations for additional explanation of why Exemption 7(A) applies.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April, 2014.



JOHN E. CUNNINGHAM III

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE 2703(D) ORDER

Case No. 1:11 EC 3
1:11 DM 3

I. ORDER

WHEREAS, on November 10, 2011, the Court denied Petitioners' motions to unseal certain pleadings in this case; and

WHEREAS, the Court ordered the United States to file a memorandum showing just cause for the continued sealing of the pleadings at issue (docs. 45, 58, 64, 78, 80 & 82); and

WHEREAS, on May 8, 2012, and November 5, 2012, the Court extended the seal for additional 180-day periods, and


WHEREAS, the United States has timely filed its memorandum and shown just cause for the continued sealing of the documents at issue because, for the reasons stated in the memorandum of the United States, unsealing of the documents at this time would damage an ongoing criminal investigation; it is hereby

ORDERED that the documents at issue (docs. 45, 58, 64, 78, 80 & 82) shall remain sealed. It is further

ORDERED that the United States shall, on the first business day 180 days from the date of this Order, file under seal and *ex parte* a memorandum showing just cause for the continued sealing of the documents addressed by this Order.

The Clerk is directed to forward copies of this Order to all counsel of record.

May 6, 2013
Alexandria, VA



The Honorable Liam O'Grady
United States District Judge

**U.S. District Court
Eastern District of Virginia - (Alexandria)
CRIMINAL DOCKET FOR CASE #: 1:11-dm-00003-TCB-LO All Defendants**

Case title: in re: 2703(d) Order; 10GJ3793

Date Filed: 01/26/2011

Date Terminated: 01/04/2012

Assigned to: Magistrate Judge Theresa
Carroll Buchanan
Referred to: District Judge Liam
O'Grady

Appeals court case number: 11-5151
4th Circuit

Defendant (1)

Jacob Appelbaum
in Re: 2703(d) Order; 10GJ3793
TERMINATED: 01/04/2012

represented by **John Kenneth Zwerling**
Zwerling Leibig & Moseley PC
114 North Alfred Street
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Designation: Retained

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ATTORNEY TO BE NOTICED

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

Disposition

None

Assigned to: Magistrate Judge Theresa
Carroll Buchanan
Referred to: District Judge Liam
O'Grady

Appeals court case number: 11-5151
4th Circuit

Defendant (2)

Rop Gonggrijp
in Re: 2703(d) Order; 10GJ3793
TERMINATED: 01/04/2012

represented by **Nina J. Ginsberg**
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Email: nginsberg@dimuro.com
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

Disposition

None

Highest Offense Level (Opening)

None

Terminated Counts

Disposition

None

Highest Offense Level (Terminated)

None

Complaints

Disposition

None

Assigned to: Magistrate Judge Theresa
Carroll Buchanan
Referred to: District Judge Liam
O'Grady

Appeals court case number: 11-5151
4th Circuit

Defendant (3)

Birgitta Jonsdottir
in Re: 2703(d) Order; 10GJ3793
TERMINATED: 01/04/2012

represented by **Jonathan Shapiro**
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Email: rglenberg@acluva.org
ATTORNEY TO BE NOTICED

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Assigned to: Magistrate Judge Theresa
Carroll Buchanan
Referred to: District Judge Liam
O'Grady

Defendant (4)

Twitter, Inc.
TERMINATED: 01/04/2012

represented by **John Kuropatkin Roche**
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Fax: 202-654-6211
Email: jroche@perkinscoie.com
ATTORNEY TO BE NOTICED

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Interested Party

Inter-Parliamentary Union
TERMINATED: 01/04/2012

Interested Party

Steven M. Bellovin, Phd., et al
TERMINATED: 01/04/2012

represented by **Marvin David Miller**
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ATTORNEY TO BE NOTICED

Interested Party

Christopher Soghoian

represented by **Christopher Soghoian**

TERMINATED: 01/04/2012

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617-308-6368
PRO SE

Plaintiff

USA

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USAVAE.ALX.ECF.FRCC@usdoj.gov

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/26/2011	<u>1</u>	MOTION to Vacate December 14, 2010 Order by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (jlan) (jcor,). (Entered: 01/28/2011)
01/26/2011	<u>2</u>	Declaration of Stuart A. Sears in Support <u>1</u> MOTION to Vacate by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (jlan) (Additional attachment (s) added on 3/11/2011: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (rban,). (Additional

		attachment(s) added on 3/11/2011: # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6) (rban,). (Entered: 01/28/2011)
01/26/2011	<u>3</u>	MOTION for Unsealing of Sealed Court Records by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (jlan) (jcor,). (Entered: 01/28/2011)
01/26/2011	<u>4</u>	Declaration of Aden J. Fine in Support of <u>3</u> MOTION for Unsealing of Sealed Court Records by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>5</u>	ORDER for Pro hac vice of Rachael E. Meny Filing fee \$ 50, receipt number 14683019049. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Main Document 5 replaced on 3/11/2011) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>6</u>	ORDER for Pro hac vice of Steven Paul Ragland Filing fee \$ 50, receipt number 14683019048. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>7</u>	ORDER for Pro hac vice of John W. Kecker Filing fee \$ 50, receipt number 14683019050. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>8</u>	ORDER for Pro hac vice of John Dewitt Cline Filing fee \$ 50, receipt number 14683019051. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>9</u>	ORDER for Pro hac vice of K. C. Goodwin Maxwell Filing fee \$ 50, receipt number 14683019052. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>10</u>	ORDER for Pro hac vice of Cindy Cohn Filing fee \$ 50, receipt number 14683019053. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>11</u>	ORDER for Pro hac vice of Marcia Hofmann Filing fee \$ 50, receipt number 14683019054. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>12</u>	ORDER for Pro hac vice of Kevin Stuart Bankston Filing fee \$ 50, receipt number 14683019055. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	<u>13</u>	ORDER for Pro hac vice of Tze Lee Tien Filing fee \$ 50, receipt number 14683019056. Signed by Magistrate Judge Theresa Carroll Buchanan on

		01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # 1 Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	14	ORDER for Pro hac vice of Benjamin Todd Siracusa Hillman Filing fee \$ 50, receipt number 14683019057. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # 1 Receipt) (rban,). (Entered: 01/28/2011)
01/28/2011	15	ORDER for Pro hac vice of Aden Jeremy Fine Filing fee \$ 50, receipt number 14683019058. Signed by Magistrate Judge Theresa Carroll Buchanan on 01/28/2011. (jlan) (Additional attachment(s) added on 3/11/2011: # 1 Receipt) (rban,). (Entered: 01/28/2011)
01/31/2011	16	NOTICE OF HEARING ON MOTION in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 3 MOTION for Unsealing of Sealed Court Records, 1 MOTION to Vacate: Motion Hearing set for 2/15/2011 at 10:30 AM before Magistrate Judge Theresa Carroll Buchanan. (jlan) (rban,). (Entered: 01/31/2011)
01/31/2011	17	MOTION for Immediate Unsealing of Motions and Upcoming Hearing by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (jlan) (jcor,). (Entered: 01/31/2011)
02/01/2011	18	NOTICE OF ATTORNEY APPEARANCE: Nina J. Ginsberg appearing for Rop Gonggrijp. (jcor) (rban,). (Entered: 02/02/2011)
02/04/2011	19	RESPONSE in Opposition by USA re 17 MOTION for Immediate Unsealing of Motions and Upcoming Hearing. (jcor) (rban,). (Entered: 02/07/2011)
02/07/2011	20	Reply in Support by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir of 17 MOTION for Immediate Unsealing of Motions and Upcoming Hearing. (jcor) (rban,). (Entered: 02/08/2011)
02/07/2011	21	Objection by USA as to 1 MOTION to Vacate Order of 12/14/2010. (jcor) (rban,). (Entered: 02/08/2011)
02/07/2011	22	RESPONSE in Opposition by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir re 3 MOTION for Unsealing of Sealed Court Records (jcor) (krob,). (Entered: 02/08/2011)
02/07/2011	23	ORDERED that the following of defendants's motions shall be unsealed: 1 Motion to Vacate ; 3 Motion for Unsealing of Sealed court Records; and 17 Motion for Immediate Unsealing of Motions. ORDERED that the 2/15/2011 hearing on defendants' motions shall be open to the public; either party who wishes to file additional material under seal must file an appropriate motion and notice of hearing. Signed by Magistrate Judge Theresa Carroll Buchanan on 2/7/2011. (jcor) (jcor,). (Entered: 02/08/2011)
02/07/2011		Documents unsealed as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir per Order dated 2/7/2011. 23 Order on Motion to Vacate, Order on Motion for Miscellaneous Relief, 17 MOTION for Immediate Unsealing of Motions and Upcoming Hearing, 1 MOTION to Vacate, 3 MOTION for Unsealing of Sealed Court Records (jcor) (Entered: 02/08/2011)

02/08/2011	<u>24</u>	MOTION for Clarification by Twitter, Inc. (jcor) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (rban,). (Entered: 02/09/2011)
02/09/2011	<u>25</u>	ORDERED that the parties shall each submit a statement and supporting memorandum by 2/14/2011 specifying which pleadings in the case numbered 1:1dm00003 should remain sealed. The hearing on this matter shall take place on 2/15/2011. Signed by Magistrate Judge Theresa Carroll Buchanan on 2/9/2011. (jcor) (rban,). (Entered: 02/09/2011)
02/09/2011	<u>26</u>	ORDERED that all pleadings previously or subsequently filed in this case, except those specifically unsealed by Court order on 2/7/2011 shall remain sealed until further order of the Court. Signed by Magistrate Judge Theresa Carroll Buchanan on 2/9/2011. (jcor) (rban,). (Entered: 02/09/2011)
02/10/2011	<u>27</u>	RESPONSE to Motion by USA as to Twitter, Inc. re <u>24</u> MOTION for Clarification. (jcor) (krob,). (Entered: 02/10/2011)
02/10/2011	<u>28</u>	ORDERED that this Court's Order of 2/7/2011 <u>23</u> shall be unsealed. Signed by Magistrate Judge Theresa Carroll Buchanan on 2/10/2011. (jcor) (rban,). (Entered: 02/11/2011)
02/10/2011	<u>29</u>	Reply in Support of <u>3</u> MOTION for Unsealing of Sealed Court Records by Jacob Appelbaum, Rop Gonggrijp, and Birgitta Jonsdottir.(jcor) (krob,). (Entered: 02/11/2011)
02/10/2011	<u>30</u>	Reply in support of <u>1</u> MOTION to Vacate by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (jcor) (krob,). (Entered: 02/11/2011)
02/14/2011	<u>31</u>	MOTION for Leave to File an Amicus Brief by Inter-Parliamentary Union. (jcor) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Notice, # <u>2</u> Proposed Order) (rban,). (Entered: 02/14/2011)
02/14/2011	<u>32</u>	Memorandum in Support by Inter-Parliamentary Union re <u>31</u> MOTION for Leave to File. (jcor) (Additional attachment(s) added on 3/11/2011: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (rban,). (Entered: 02/14/2011)
02/14/2011	<u>33</u>	NOTICE OF HEARING ON MOTION in case re: <u>31</u> MOTION for Leave to File an <i>Amicus</i> Brief : Motion Hearing set for 2/15/2011 at 10:30 AM before Magistrate Judge Theresa Carroll Buchanan. (jcor) (krob,). (Entered: 02/14/2011)
02/14/2011	<u>34</u>	Position on Unsealing of Records by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. (jcor) (krob,). (Entered: 02/15/2011)
02/14/2011	<u>35</u>	Statement and Supporting Memorandum or Real Parties in interest in response to the Court's Order of 2/9/2011 concerning unsealing of this docket by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (jcor) (krob,). (Entered: 02/15/2011)
02/14/2011	<u>36</u>	ORDER granting <u>31</u> Motion for Leave to File an Amicus Brief.

		Signed by Magistrate Judge Theresa Carroll Buchanan on 2/14/2011. (jcor) (rban,). (Entered: 02/15/2011)
02/15/2011	37	Minute Entry for proceedings held before Magistrate Judge Theresa Carroll Buchanan: Appearances by Counsel Motion Hearing as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. held on 2/15/2011 re 1 MOTION to Vacate filed by Birgitta Jonsdottir, Rop Gonggrijp, Jacob Appelbaum, 3 MOTION for Unsealing of Sealed Court Records filed by Birgitta Jonsdottir, Rop Gonggrijp, Jacob Appelbaum. Oral Argument heard. Matter taken under advisement. Order to follow. (Tape #FTR.) (gwal,) (Entered: 02/15/2011)
03/11/2011	38	MEMORANDUM OPINION as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. Signed by Magistrate Judge Theresa Carroll Buchanan on 3/11/2011. (rban,) (Main Document 38 replaced on 3/11/2011) (rban,). (Entered: 03/11/2011)
03/11/2011	39	ORDERED that petitioners' Motion to Vacate 1 is DENIED; that petitioners' Motion to Unseal is DENIED as to docket 10-gj-3793 and GRANTED as to docket 1:11-dm-00003 with only the redaction of the government attorney's email address in document 24; ORDERED that petitioners' request for a public docket of material in case number 10-gj-3793 shall be taken under further consideration. Signed by Magistrate Judge Theresa Carroll Buchanan on 3/11/2011. (rban,) (Entered: 03/11/2011)
03/11/2011	40	ORDERED that Twitter, Inc.'s Motion for Clarification is DENIED as moot. Signed by Magistrate Judge Theresa Carroll Buchanan on 3/1/2011. (rban,) (Entered: 03/11/2011)
03/11/2011		Case unsealed as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. (krob) (Entered: 03/11/2011)
03/14/2011	41	TRANSCRIPT of proceedings held on 2-15-2011 before Mag. Judge Buchanan. Court Reporter/Transcriber Norman Linnell, telephone number 703-549-4626. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 4/13/2011. Redacted Transcript Deadline set for 5/16/2011. Release of Transcript Restriction set for 6/13/2011.(linnell, norman) (Entered: 03/14/2011)
03/14/2011	42	Notice of Filing of Official Transcript re 41 Transcript (jlan) (Entered: 03/14/2011)
03/25/2011	43	Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir re 39 Order on Motion for Miscellaneous Relief, Order on Motion to Vacate,,,, (Attachments: # 1 Affidavit Bringola Declaration and Exhibits, # 2 Affidavit Sears Declaration and Exhibits)(Ginsberg, Nina) (Entered: 03/25/2011)
03/25/2011	44	Notice of Hearing Date set for April 22, 2011 @ 10:00 a.m. re 43 Objection, (Ginsberg, Nina) (Entered: 03/25/2011)
03/28/2011		Notice of Correction re 43 Objection, 44 Notice of Hearing Date.

		The signature block on the document does not match the filing users login. The filing user has been notified and has been asked to either refile the document or to have the attorney whose signature block appears on the document refile the document. (jcor) (Entered: 03/28/2011)
03/28/2011	45	Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir re 39 Order on Motion for Miscellaneous Relief, Order on Motion to Vacate,,,, (Attachments: # 1 Affidavit Bringola Declaration and Exhibits 1-3, # 2 Affidavit Sears Declaration and Exhibits 1-5)(Ginsberg, Nina) Modified text on 3/30/2011 (clar,). (Entered: 03/28/2011)
03/28/2011	46	Notice of Hearing Date <i>April 22, 2011 @ 10:00 a.m.</i> re 45 Objection, (Ginsberg, Nina) (Entered: 03/28/2011)
03/29/2011	47	MOTION for Leave to File Brief as Amici Curiae by Christopher Soghoian. (jcor) (Additional attachment(s) added on 4/4/2011: # 1 Attached Brief) (jcor,). (Entered: 03/30/2011)
03/30/2011		Set Deadlines re Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir re 39 Order on Motion for Miscellaneous Relief, Order on Motion to Vacatein case as to Rop Gonggrijp Motion Hearing set for 4/22/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 03/30/2011)
03/31/2011	48	MOTION for Leave to File <i>Brief of Amici Curiae</i> by Steven M. Bellovin, Phd., et al as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc.. (Miller, Marvin) (Additional attachment removed 4/4/2011: attached to wrong motion) (Entered: 03/31/2011)
03/31/2011	49	Memorandum in Support by Steven M. Bellovin, Phd., et al as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 48 MOTION for Leave to File <i>Brief of Amici Curiae The Brief of Amici Curiae</i> (Miller, Marvin) (Entered: 03/31/2011)
03/31/2011	50	ORDER for Pro hac vice of Thomas Edward Moore III Filing fee \$ 50, receipt number 14683020483. Signed by Magistrate Judge Theresa Carroll Buchanan on 3/31/2011. (Attachments: # 1 Receipt) (jcor) (Entered: 03/31/2011)
04/01/2011	51	NOTICE of Entry of Appearance and Request for Notice of Electronic Filing ("NEF") by Jacob Appelbaum (Sears, Stuart) (Entered: 04/01/2011)
04/01/2011	52	ORDER granting 47 Motion for Leave to File as to Jacob Appelbaum (1), Rop Gonggrijp (2), Birgitta Jonsdottir (3), Twitter, Inc. (4). Signed by District Judge Liam O'Grady on 4/1/2011. (rban,) (Entered: 04/04/2011)
04/05/2011	53	ORDER granting 48 Motion for Leave to File Brief as amici curiae. Signed by District Judge Liam O'Grady on 4/5/2011. (jcor) (Entered: 04/06/2011)
04/08/2011	54	NOTICE OF ATTORNEY APPEARANCE Andrew Peterson appearing for USA. (Peterson, Andrew) (Entered: 04/08/2011)
04/08/2011	55	RESPONSE by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta

		Jonsdottir, Twitter, Inc. re 43 Objection, (Peterson, Andrew) (Entered: 04/08/2011)
04/14/2011	56	Reply by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir re 39 Order on Motion for Miscellaneous Relief, Order on Motion to Vacate,,,, (Ginsberg, Nina) (Entered: 04/14/2011)
04/20/2011		Per LO chambers motions set for 4/22/11 on papers and the hearing is cancelled (clar,) (Entered: 04/20/2011)
04/20/2011		Deadline terminated (clar,) (Entered: 04/20/2011)
05/04/2011	57	ORDERED that case 10-gj-3793 is hereby transferred to new case 1:11-ec-3, which remain under seal except as to the previously unsealed 2703(d) Order of 12/14/2010 ("Twitter Order"), and docketed on the running list in the usual manner. Signed by Magistrate Judge Theresa Carroll Buchanan on 5/4/2011. (jcor) (Entered: 05/05/2011)
05/19/2011	58	Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 57 Order dated 5/4/11, (Attachments: # 1 Affidavit Sears Declaration and Ex. A-B)(Glenberg, Rebecca) Modified text on 5/20/2011 (clar,). (Entered: 05/19/2011)
05/19/2011	59	Notice of Hearing Date <i>June 24, 2011, 10 a.m.</i> re 58 Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Glenberg, Rebecca) (Entered: 05/19/2011)
05/20/2011		Set Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 58 Objection re 57 Order, (Attachments: # 1 Affidavit Sears Declaration and Ex. A-B) Motion Hearing set for 6/24/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 05/20/2011)
06/01/2011	60	MEMORANDUM OPINION Petitioner's Motion for Unsealing of Sealed Court Records 3 is DENIED as to this last remaining issue. An appropriate order will be entered. Signed by Magistrate Judge Theresa Carroll Buchanan on 6/1/2011. (jcor) (Entered: 06/02/2011)
06/01/2011	61	ORDER granting 3 Motion as to Jacob Appelbaum ; Rop Gonggrijp ; Birgitta Jonsdottir. ORDERED that Defendants' Motion is DENIED as to the remaining issue. Signed by Magistrate Judge Theresa Carroll Buchanan on 6/1/2011. (jcor) (Entered: 06/02/2011)
06/02/2011	62	RESPONSE by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11MOTION for Hearing for Objection re 57 Order dated 5/4/11 (Peterson, Andrew) (Entered: 06/02/2011)
06/08/2011	63	Reply by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11MOTION for Hearing for

		Objection re 57 Order dated 5/4/11 (Glenberg, Rebecca) (Entered: 06/08/2011)
06/16/2011	64	Objection by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 61 Order on Motion for Miscellaneous Relief (Attachments: # 1 Affidavit Hillman Declaration and Exhibits A-F)(Glenberg, Rebecca) Modified text on 6/17/2011 (clar,). (Entered: 06/16/2011)
06/16/2011	65	Notice of Hearing Date <i>July 29, 2011 10:00 AM</i> re 64 Objection, by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Glenberg, Rebecca) (Entered: 06/16/2011)
06/17/2011		Set Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 64 Objection re 61 Order on Motion for Miscellaneous Relief Objection re 61 Order on Motion for Miscellaneous Relief. Motion Hearing set for 7/29/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 06/17/2011)
06/21/2011	66	Notice of Hearing Date (<i>amended</i>) set for July 29, 2011 at 10:00 a.m. re 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11 MOTION for Hearing for Objection re 57 Order dated 5/4/11 by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Glenberg, Rebecca) (Entered: 06/21/2011)
06/22/2011		Reset Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11 MOTION for Hearing for Objection re 57 Order dated 5/4/11. Motion Hearing set for 7/29/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 06/22/2011)
06/30/2011	67	RESPONSE by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 64 Objection re 61 Order on Motion for Miscellaneous Relief Objection re 61 Order on Motion for Miscellaneous Relief (Peterson, Andrew) (Entered: 06/30/2011)
07/08/2011	68	Reply by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 61 Order on Motion for Miscellaneous Relief, 64 Objection re 61 Order on Motion for Miscellaneous Relief Objection re 61 Order on Motion for Miscellaneous Relief (Glenberg, Rebecca) (Entered: 07/08/2011)
07/13/2011	69	Notice of Hearing Date (<i>amended</i>) set for September 2, 10:00a.m. re 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11 MOTION for Hearing for Objection re 57 Order dated 5/4/11, 64 Objection re 61 Order on Motion for Miscellaneous Relief Objection re 61 Order on Motion for Miscellaneous Relief by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Glenberg, Rebecca) (Entered: 07/13/2011)
07/14/2011		Set/Reset Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11 MOTION for Hearing for

		Objection re 57 Order dated 5/4/11, 64 Objection re 61 Order on Motion for Miscellaneous Relief Objection re 61 Order on Motion for Miscellaneous Relief. Motion Hearing set for 9/2/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 07/14/2011)
08/08/2011	70	NOTICE of Change of Address by Jacob Appelbaum (Sears, Stuart) (Entered: 08/08/2011)
08/18/2011	71	MOTION to Withdraw as Attorney by Benjamin T. Siracusa Hillman. by Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc.. (Attachments: # 1 Proposed Order)(Glenberg, Rebecca) (Entered: 08/18/2011)
08/26/2011	72	ORDER granting 71 Motion to Withdraw as Attorney. as to Jacob Appelbaum (1), Rop Gonggrijp (2), Birgitta Jonsdottir (3), Twitter, Inc. (4). Upon consideration of the motion to withdraw appearance of Benjamin T. Siracusa Hillman, it is hereby ORDERED that the motion is granted. Signed by District Judge Liam O'Grady on 8/26/2011. (jcor) (Entered: 08/26/2011)
08/29/2011	73	MOTION to Continue <i>Hearing</i> by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc.. (Attachments: # 1 Proposed Order)(Davis, John) (Entered: 08/29/2011)
09/01/2011	74	ORDER granting 73 Motion to Continue; ORDERED that the motions hearing currently scheduled for September 2, 2011 at 9:00 am is continued, and re-scheduled for September 16, 2011 at 10:00 am as to Jacob Appelbaum (1), Rop Gonggrijp (2), Birgitta Jonsdottir (3), Twitter, Inc. (4). Signed by District Judge Liam O'Grady on 09/01/2011. (jlan) (Entered: 09/01/2011)
09/01/2011		Reset Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. 58 MOTION for Hearing for Objection re 57 Order dated 5/4/11 MOTION for Hearing for Objection re 57 Order dated 5/4/11, 64 Objection re 61 Order on Motion for Miscellaneous Relief re 61 Order on Motion for Miscellaneous Relief. Motion Hearing set for 9/16/2011 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (jlan) (Entered: 09/01/2011)
09/15/2011		Per LO chambers motions set for 9/16/11 on papers (clar,) (Entered: 09/15/2011)
09/15/2011		Deadlines terminated (clar,) (Entered: 09/15/2011)
09/20/2011	75	MOTION Non-Confidential Memorandum Accompanying (1) Motion for Sealing and (2) Motion for Immediate Unsealing by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (Sears, Stuart) (Entered: 09/20/2011)
09/20/2011	76	NOTICE of (1) Motion for Sealing and (2) Motion for Immediate Unsealing by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Sears, Stuart) (Entered: 09/20/2011)
09/20/2011	77	Sealed Document (jlan) (Entered: 09/21/2011)

09/20/2011	78	Sealed Motion by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (Attachments: # 1 Proposed Order)(jlan) (Entered: 09/21/2011)
09/20/2011	79	Sealed Document in re 78 Sealed Motion filed by Birgitta Jonsdottir, Rop Gonggrijp, Jacob Appelbaum (jlan) (Entered: 09/21/2011)
10/11/2011	80	MOTION Non-Confidential Memorandum Accompanying (1) Motion for Sealing and (2) Motion for Immediate Unsealing by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (Sears, Stuart) (Entered: 10/11/2011)
10/11/2011	81	Sealed Document (jlan) (Entered: 10/11/2011)
10/11/2011	82	Sealed Motion by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. (Attachments: # 1 Proposed Order)(jlan) (Entered: 10/11/2011)
11/10/2011	84	ORDER denying 45 Motion; denied as moot 58 Motion for Hearing; denying 64 Motion. Signed by District Judge Liam O'Grady on 11/10/2011. (See Order for Specifics) (jlan) (Entered: 11/10/2011)
11/10/2011	85	MEMORANDUM OPINION as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir. Signed by District Judge Liam O'Grady on 11/10/2011. (jlan) (Entered: 11/10/2011)
11/21/2011	86	NOTICE of Change of Address by Rop Gonggrijp (Ginsberg, Nina) (Entered: 11/21/2011)
11/23/2011	87	NOTICE OF APPEAL by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing, (Receipt #0422-2794316 amount \$455.00)(Glenberg, Rebecca) (Entered: 11/23/2011)
11/25/2011	88	Transmission of Notice of Appeal to 4CCA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. to US Court of Appeals re 87 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov). (rban,) (Entered: 11/25/2011)
12/02/2011	89	MOTION to Stay re 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing,. (Attachments: # 1 Proposed Order)(Glenberg, Rebecca) (Entered: 12/02/2011)
12/02/2011	90	Notice of Hearing Date set for 01-13-2012 re 89 MOTION to Stay re 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing, by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir (Glenberg, Rebecca) (Entered: 12/02/2011)
12/05/2011		Set Deadlines re Motion or Report and Recommendation in case as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir 89 MOTION to Stay re 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing,. Motion Hearing set for 1/13/2012 at 10:00 AM in Alexandria Courtroom 700 before District Judge Liam O'Grady. (clar,) (Entered: 12/05/2011)
12/08/2011	91	USCA Case Number 11-5151 4th Circuit. Case Manager M. Radday for 87 Notice of Appeal filed by Birgitta Jonsdottir, Rop Gonggrijp, Jacob

		Appelbaum. (jcor) (Entered: 12/08/2011)
12/14/2011	92	RESPONSE in Opposition by USA as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 89 MOTION to Stay re 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing, (Peterson, Andrew) (Entered: 12/14/2011)
12/20/2011	93	REPLY TO RESPONSE to by Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. re 89 MOTION to Stay re 84 Order on Motion for Miscellaneous Relief, Order on Motion for Hearing, (Glenberg, Rebecca) (Entered: 12/20/2011)
01/04/2012	94	MEMORANDUM OPINION The Court concludes that a stay and injunction are not appropriate at this time. Petitioners' motion is therefore DENIED. Signed by District Judge Liam O'Grady on 1/4/2012. (jcor) (Entered: 01/05/2012)
01/04/2012	95	ORDERED that Petitioners' Motion to Stay and Injunction Pending Appeal 89 be and is hereby DENIED. Because resolution of this motion requires no argument, the Clerk shall remove the hearing set for 1/13/2011 from the calendar. Signed by District Judge Liam O'Grady on 1/4/2012. (jcor) (Entered: 01/05/2012)
01/04/2012	96	MEMORANDUM OPINION as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. Petitioners' Motion is DENIED. Signed by District Judge Liam O'Grady on 1/4/2012. (jcor) (Entered: 01/06/2012)
11/07/2012	98	ORDERED that the documents at issue (dos. 45, 58, 64, 78, 80 &82) shall remain sealed; that the US shall, on the first business day 180 days from the date of this Order, file under seal and ex parte a memorandum showing just cause for the continued sealing of the documents addressed by this order. Signed by District Judge Liam O'Grady on 11/7/2012. (rban,) (Entered: 11/07/2012)
11/07/2012	99	ORDERED that this court's Order of 5/8/12, designated as being "under seal" is hereby unsealed and shall be publicly docketed in case 1:11DM3. Signed by District Judge Liam O'Grady on 11/7/2012. (rban,) (Entered: 11/07/2012)
11/07/2012	100	ORDERED that the documents at issue (dos. 45, 58, 64, 78, 80 &82) shall remain sealed; that the US shall, on the first business day 180 days from the date of this Order, file under seal and ex parte a memorandum showing just cause for the continued sealing of the documents addressed by this order. Signed by District Judge Liam O'Grady on 5/8/2012. (rban,) (Entered: 11/07/2012)
01/25/2013	102	USCA PUBLISHED OPINION as to Jacob Appelbaum, Rop Gonggrijp, Birgitta Jonsdottir, Twitter, Inc. -- PETITION FOR MANDAMUS DENIED. (gwal,) (Entered: 01/25/2013)
01/25/2013	103	USCA JUDGMENT as to Jacob Appelbaum, Rop Gonggrijp, Birgitta

		Jonsdottir, Twitter, Inc. In accordance with the decision of this court, this appeal is construed as a petition for writ of mandamus and denied. (gwal,) (Entered: 01/25/2013)
02/19/2013	104	USCA Mandate re 87 Notice of Appeal. The judgment of this court, entered 1/25/13, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of FRAP. (rban,) (Entered: 02/19/2013)
05/06/2013	105	ORDERED that the documents at issue (docs. 45, 58, 64, 74, 80 & 82) shall remain sealed. ORDERED that the United States shall, on the first business day 180 days from the date of this Order, file under seal and ex parte a memorandum showing just cause for the continued sealing of the documents addressed by this Order. Signed by District Judge Liam O'Grady on 5/6/2013. (jcor) (Entered: 05/07/2013)

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID HOUSE,)
)
Plaintiff,)
)
v.)
)
JANET NAPOLITANO, in her official capacity as)
Secretary of the U.S. Department of Homeland)
Security; ALAN BERSIN, in his official capacity as)
Commissioner, U.S. Customs and Border Protection;)
JOHN T. MORTON, in his official capacity as Director,)
U.S. Immigration and Customs Enforcement,)
)
Defendants.)
)

Case No. 1:11-cv-10852-DJC

STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff David House and Defendants Janet Napolitano, Secretary of the U.S. Department of Homeland Security, Alan Bersin, Commissioner, U.S. Customs and Border Protection, and John Morton, Director, U.S. Immigration and Customs Enforcement, in their official capacities, hereby stipulate to the dismissal of this Action with prejudice.

Each party shall bear his or her own costs, expenses and attorneys' fees.

Dated: May 23, 2013

Respectfully Submitted,

AMERICAN CIVIL LIBERTIES
UNION

U.S. DEPARTMENT OF JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Catherine Crump

Catherine Crump

May 23, 2013