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[REDACTED]
AMERICAN CIVIL LIBERTIES UNION;
and AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

:
: FILED UNDER SEAL

:
: DECLARATION OF
: DAVID W. SZADY

:
: JOHN ASHCROFT, in his official
: capacity as Attorney General of
: the United States; ROBERT MUELLER,
: in his official capacity as
: Director of the Federal Bureau of Investigation

Special Agent in Charge of the FBI's San Francisco Division with

responsibility for federal counterintelligence and terrorism

(U) Counterintelligence Center's Counterspy Group

3. I make this declaration in support of the Government's motion to dismiss the complaint or for summary judgment in its favor in connection with the above-captioned action in which

activities conducted to protect against among other things.

espionage, other intelligence activities, and international terrorist activities. Id. § 3.4(a).¹

5. The Executive Order also charges the FBI with conducting counterintelligence activities outside the United States in coordination with the CIA. See id. § 1.14(b). The Executive Order further charges the FBI with, within the United

7 — At the tragic events of September 11, 2001

demonstrated, the catastrophic damage and loss of life that
result from terrorist attacks carried out by international

_____ of _____

9. Accordingly, secrecy in conducting such foreign

intelligence and counter-terrorism investigations is

13

investigation, they will likely take action to avoid detection or

intelligence gathering. This could

include the target's abscondment, destruction of damaging

act and to accelerate their plans before the Government identifies them.

the FBI has determined through its past and ongoing

terrorist and foreign intelligence organizations have the sophistication and capability to closely analyze publicly available information concerning the United States' intelligence gathering activities. Terrorist and foreign intelligence

future investigations, and to exploit any perceived weaknesses of our intelligence gathering capabilities.

The Use of NSLs in Foreign Counterintelligence and Counter-Terrorism Investigations

13. An NSL issued under 18 U.S.C. § 2709 is one of the tools available to the FBI for conducting its foreign

foreign counterintelligence investigations have revealed that

content of any communication, including the subject line, that the subscriber sends or receives through the provider's services.

16. As a prerequisite to the FBI issuing an NSL pursuant to 18 U.S.C. § 2709, the Director of the FBI or his designee in a position not lower than Deputy Assistant Director at FBI

Washington or special agent in charge of an FBI field office

designated by the Director must certify in writing that the

records sought are relevant to an authorized investigation to

prevent or detect terrorism, as defined in 18 U.S.C. § 2382

compromise counterintelligence and counter-terrorism investigations in a variety of ways.

19. Disclosure of a particular NSL seeking information

disclosure of a particular NSL seeking information could alert the target that he

makes to the FBI to what he or she believes that the FBI already knows.

20. Disclosure of a particular NSL seeking information

about a person or the disclosure of a source's identity or

foreign intelligence organizations to know that a particular

Some commercial intelligence leads with third parties precisely

counterintelligence and counter-terrorism investigations, the FBI
is not forced to choose between pursuing relevant information

could discern that the FBI is investigating particular planned

communication services described in the NSLs, and take action to thwart the investigation of those particular planned acts and operations.

NSL seeks information about the direct target of an

domestic and foreign intelligence organizations have the

combination, can (1) reconstruct the scope, focus and progress of
a particular investigation or (2) demonstrate how the FBI

For example, if a particular communication

intelligence organizations jeopardized. For example, the nature of the particular information sought in an NSL could permit these organizations to deduce which of their members has decided to cooperate with the authorities, leading not only to a change in [redacted] but also to [redacted]

[redacted]

potential reprisals against family members of the suspected cooperator.

Need for Continuing Non-Disclosure of NSLs

29. Regardless of whether the subject of an NSL remains the target of an ongoing counter-terrorism or counterintelligence investigation, the critical need for non-disclosure of NSLs continues.

[redacted]

investigation are forward-looking and often long

[redacted]

ensure that co-conspirators do not learn that the FBI is aware of the fact that they communicated with the person about whom information was sought through the NSL.

32. In addition, an NSL might have been issued based on

information provided by a confidential informant; disclosure of

confidential informant and retaliation against the informant and/or his family.

33. Moreover, even if the subject of an NSL were arrested and prosecuted, it is critical that remaining terrorist or

information provided by a confidential informant; disclosure of