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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2014 FEB 12 PM 12:49

LEEANN FLYNN HALL
CLERK OF COURT

(TS//SI//NF) IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION FOR
AN ORDER REQUIRING THE PRODUCTION
OF TANGIBLE THINGS [REDACTED]

Docket Number BR 14-01

(TS//SI//NF) RESPONSE OF THE UNITED STATES TO THE PETITION OF
[REDACTED]

CHALLENGING A PRODUCTION ORDER ISSUED IN DOCKET NUMBER BR
14-01 PURSUANT TO 50 U.S.C. § 1861(F)(2)(A) FOREIGN INTELLIGENCE
SURVEILLANCE COURT RULE OF PROCEDURE 33

(TS//SI//NF) The United States of America, through the undersigned Department
of Justice attorney, hereby responds to the Petition filed with this Court on January 22,
2014 [REDACTED]

[REDACTED] or "Petitioner") under 50 U.S.C. § 1861(f)(2)(A) and Rule 33 of the U.S.

Foreign Intelligence Surveillance Court (FISC or Court) Rules of Procedure "to vacate,

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Classified by: Tashina Gauhar, Deputy Assistant
Attorney General, NSD, DOI

Reason: 1.4(c)

Declassify on: [REDACTED]

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modify, or reaffirm" the production order issued [REDACTED] on January 3, 2014.

1. (~~TS//SI//NF~~) Upon consideration of the Application by the United States, on January 3, 2014, the Honorable Thomas F. Hogan of this Court issued orders in the above-captioned docket number requiring, among other things, the production to the NSA of certain call detail records or "telephony metadata" [REDACTED] for investigations to protect against international terrorism concerning the activities of certain identified foreign terrorist organizations, which investigations are being conducted by the FBI under guidelines the Attorney General has approved pursuant to Executive Order 12333, as amended. The authorization granted in docket number BR 14-01 expires on March 28, 2014, at 5:00 p.m. Eastern Time. The Court's Primary Order and the Secondary Order [REDACTED] are incorporated by reference.

2. (~~TS//SI//NF~~) On January 22, 2014 [REDACTED] this Court to "vacate, modify, or reaffirm" the production order issued [REDACTED] in light of the Memorandum Opinion issued by the United States District Court for the District of Columbia in *Klayman v. Obama* on December 16, 2013. The Court, by Scheduling Order entered on January 23, 2014, directed the Government to respond to the Petition on or before February 12, 2014.

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3. (~~TS//SI//NF~~) The Primary Order in the above-captioned docket number makes clear that the Court, in entertaining and ultimately ruling upon the Government's application, carefully considered not only the opinions entered by Judges Eagan and McLaughlin of this Court in docket numbers BR 13-109 and BR 13-158, respectively, and the decision issued by the United States District Court for the Southern District of New York in *American Civil Liberties Union v. Clapper*, ___ F. Supp.2d ___, 13 Civ. 3994 (WHP), 2013WL6819708 (S.D.N.Y. Dec. 27, 2013), but also the decision of the United States District Court for the District of Columbia in *Klayman v. Obama*, ___ F. Supp.2d ___, Civ. Action No. 13-0851 (RJL), 2013WL6571596 (D.D.C. Dec. 16, 2013). See Primary Order, docket number BR 14-01 at 2, n. 1.

4. (~~TS//SI//NF~~) Following its careful consideration of each of those relevant decisions, the record demonstrates that the Court concluded that neither the U.S. Constitution nor Section 215 imposed any impediment to the Government's request. Accordingly, the Court issued a Primary Order granting the Government's application, and a Secondary Order [REDACTED] to produce certain bulk telephony metadata.

5. (~~TS//SI//NF~~) Accordingly, it is appropriate for the Court to affirm its January 3, 2014 Secondary Order [REDACTED] and to order [REDACTED] compliance with that production order.

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(TS//SI//NF) WHEREFORE, the United States of America respectfully requests that the Court affirm its January 3, 2014 Secondary Order [REDACTED] and order [REDACTED] compliance with that production order.

Respectfully submitted,

John P. Carlin
Acting Assistant Attorney General

Tashina Gauhar
Deputy Assistant Attorney General

12 Feb 2014
Date

By:

[REDACTED]
Office of Intelligence
National Security Division
U.S. Department of Justice

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(U) CERTIFICATE OF SERVICE

(S) I hereby certify that, on February 12, 2014, a true and correct copy of the United States of America's Response to Petition was submitted, by hand delivery, to a Litigation Security Officer, for delivery to counsel of record 



U.S. Department of Justice

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