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DATE FILED: 2/27/15

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS MERRILL,
Plaintiff,
v.
ERIC HOLDER, Jr., in his official capacity as Attorney General of the United States, and JAMES B. COMEY, in his official capacity as Director of the Federal Bureau of Investigation,
Defendants.

14 CIV. 09763 (VM)

**STIPULATION AND  
PROPOSED ORDER**

WHEREAS, in 2004, the Federal Bureau of Investigation (the "FBI") delivered a national security letter (the "Merrill NSL") issued under 18 U.S.C. § 2709 to Calyx Internet Access, and its then-president, Plaintiff Nicholas Merrill. Pursuant to 18 U.S.C. § 2709, the Merrill NSL sought certain information from its recipients. The Merrill NSL included a page titled "Attachment," further specifying the information being sought (the "Attachment"). The Merrill NSL further notified its recipients that 18 U.S.C. § 2709 prohibited its recipients from disclosing the fact that the FBI had sought or obtained access to information or records under that statute.

WHEREAS, by Stipulation and Order entered by the Court on April 15, 2014, in Case No. 04 Civ. 2614 (VM), the nondisclosure obligation set forth in 18 U.S.C. § 2709 currently applies only to the Attachment associated with the Merrill NSL, except insofar as certain information in the Attachment has already been made public.

WHEREAS, Plaintiff in the present lawsuit challenges the lawfulness of the continuing nondisclosure requirement.

WHEREAS, submissions to the court regarding the lawfulness of the continuing nondisclosure obligation may require one or both parties to refer to matters that remain subject to

the nondisclosure obligation.

WHEREAS, in order to maintain the confidentiality of information subject to the continuing nondisclosure obligation while its lawfulness is adjudicated, certain redactions may be necessary before posting to the public docket filings that refer to matters subject to the nondisclosure requirement.

WHEREAS, in prior litigation over the same nondisclosure obligation the Court set forth a procedure for preparing redacted versions of any documents filed under seal for posting on the public docket, *see Doe v. Ashcroft*, 317 F. Supp. 2d 488 (S.D.N.Y. 2004), and similar procedures would protect both the parties' and the public's interest in open access to these proceedings, as well as the Defendants' interest in maintaining the confidentiality of information subject to the nondisclosure requirement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that the following procedure will govern submission of documents in the above-captioned matter:

1. Any document that contains information subject to the nondisclosure requirement set forth in the Stipulation and Order entered by this Court on April 15, 2014, in Case No. 04 Civ. 2614 (VM), shall be filed in the first instance under seal.
2. On the date of any such filing, the parties shall confer and endeavor to agree upon a proposed redacted version of the document for filing on the public docket. The filing party shall then submit to the opposite party for verification a version of the document containing all redactions which either party proposes. Once verified and agreed upon, that document as redacted shall be filed on the public docket. The discussions, verification, and public filing mentioned above shall be completed by the end of the

business day following the date of the initial sealed filing. With respect to merits briefing, the time period shall be two business days.

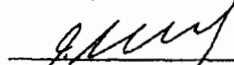
- 3. In the event there are disputed redactions, the proponent of any disputed redaction shall, within two business days following any filing under paragraph 2, write a letter to the Court explaining the specific and compelling reasons why those disputed portions of the filing should be redacted. The opposite party shall have two business days within which to respond by letter. With respect to merits briefing, each party shall have four business days, instead of two. Those letters shall be filed under seal, with proposed redacted versions. As appropriate, the Court will then direct the parties to file the original redacted version, or a revised redacted version of the document and the letters.

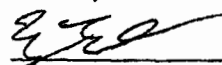
Dated: New Haven, Connecticut  
February 26, 2015

Dated: New York, New York  
February 26, 2015

MEDIA FREEDOM AND  
INFORMATION ACCESS CLINIC,  
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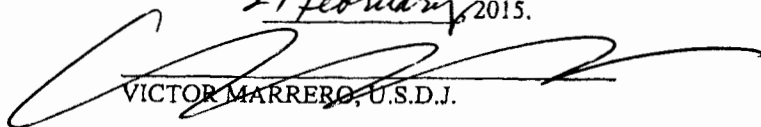
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SO ORDERED.

Dated: New York, NY

27 February 2015.

  
VICTOR MARRERO, U.S.D.J.

