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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14	ELECTRONIC FRONTIER FOUNDATION,	)	NO. 08-1023 JSW
15)	
16	Plaintiff,	)	AMENDED APPLICATION FOR ORDER
17	v.	)	TO SHORTEN TIME FOR A HEARING
18	OFFICE OF THE DIRECTOR OF NATIONAL	)	ON PLAINTIFF'S MOTION FOR A
19	INTELLIGENCE	)	PRELIMINARY INJUNCTION;
20	and	)	MEMORANDUM IN SUPPORT OF
21	DEPARTMENT OF JUSTICE,	)	AMENDED APPLICATION FOR ORDER
22		)	TO SHORTEN TIME FOR A HEARING
23	Defendants.	)	ON PLAINTIFF'S MOTION FOR A
24		)	PRELIMINARY INJUNCTION

Date: TBD
Time: TBD
Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

25 Plaintiff Electronic Frontier Foundation ("EFF") moves this Court for an order to shorten
26 time to April 4, 2008 or as soon thereafter as is practicable for a hearing on Plaintiff's Motion for a
27 Preliminary Injunction, which is currently scheduled for a hearing on May 9, 2008.

1 enlargement or shortening of time to alter events or deadlines. Thus, this Court has the authority to
2 shorten the time for a hearing on EFF's Motion for a Preliminary Injunction.

3 **II. SHORTENED TIME IS APPROPRIATE UNDER THESE CIRCUMSTANCES**

4 The Court should hear the Motion for a Preliminary Injunction on shortened time because
5 the very nature of the right that EFF seeks to vindicate depends upon timeliness. This is an action
6 under the FOIA, 5 U.S.C. § 552, seeking the expedited processing and release of records held by
7 the government concerning efforts of telecommunications carriers to lobby for changes to federal
8 surveillance law, particularly to ensure that they are not held accountable for their role in a
9 massive, unlawful government surveillance program. This lawsuit seeks to compel ODNI and DOJ
10 to process the requested records expeditiously under the FOIA because they involve a matter about
11 which there is an "urgency to inform the public about actual or alleged [f]ederal [g]overnment
12 activity," and are sought by "a person primarily engaged in disseminating information." 5 U.S.C. §
13 552(a)(6)(E)(v)(II), 32 C.F.R. § 1700.12(c)(2), and 28 C.F.R. § 16.5(d)(1)(ii). Both agencies have
14 conceded that EFF's FOIA requests satisfy this statutory standard and the agencies' own
15 implementing regulations, and are therefore legally entitled to expedited processing. Despite the
16 fact that EFF's rights and Defendants' obligations are highly time-sensitive, the agencies have to
17 date neither completed the processing of EFF's requests, nor informed EFF of an anticipated date
18 for completion. Furthermore, both ODNI and DOJ have exceeded the generally applicable 20-day
19 statutory deadline for processing a standard, non-expedited FOIA request.
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23 This Court should also hear the matter on shortened time because the subject matter of
24 EFF's requests is directly relevant to the ongoing public and congressional debate about whether to
25 immunize telecommunications companies against legal liability for participating in unlawful
26 government surveillance. As of the filing of this lawsuit, the House of Representatives has passed
27 legislation that would amend the Foreign Intelligence Surveillance Act ("FISA"), but would not
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1 shield telecommunications companies from civil liability for their role in the government's
2 warrantless surveillance program. H.R. 3773 (as passed by House). On February 12, 2008,
3 however, the Senate passed its own version of legislation to amend FISA, which purports to require
4 dismissal of any state or federal lawsuit against a carrier for facilitating government surveillance if
5 the Attorney General certifies to the court that the company was assisting in certain intelligence
6 activity authorized by the President. H.R. 3773, FISA Amendments Act of 2008 (engrossed
7 amendment as agreed to by Senate). The day before EFF filed its Motion for a Preliminary
8 Injunction, President Bush told reporters that amending FISA is a "very urgent priority" of the
9 Administration. Press Conference of the President, Feb. 28, 2008,
10 <http://www.whitehouse.gov/news/releases/2008/02/20080228-2.html> (attached to Declaration of
11 Marcia Hofmann in Support of Plaintiff's Motion for a Preliminary Injunction as Ex. J.)
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14 Furthermore, the Court should hear this matter on shortened time because EFF's repeated
15 efforts to negotiate a production schedule with Defendants have been unsuccessful. On February
16 20, 2008, EFF attorney Marcia Hofmann phoned Andrew I. Warden, Trial Attorney at the
17 Department of Justice, and informed him that EFF had filed the complaint in this matter that
18 afternoon. The following day, Ms. Hofmann informed Mr. Warden that EFF wished to explore the
19 possibility of negotiating a processing schedule for EFF's FOIA requests to eliminate the need for
20 further action in the above-captioned case. Mr. Warden and Ms. Hofmann discussed the
21 surveillance reform legislation currently pending in the House and Senate, and Ms. Hofmann told
22 Mr. Warden that EFF would consider seeking preliminary injunctive relief in the absence of an
23 agreement to process EFF's requests in a timely manner. On February 27, 2008, Mr. Warden and
24 Ms. Hofmann spoke again regarding the above-captioned case, but were unable to reach a mutually
25 agreeable processing schedule for EFF's FOIA requests. On February 28, 2008, Ms. Hofmann
26 informed Mr. Warden of EFF's intention to move for a preliminary injunction if the parties had not
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1 reached a firm agreement on the processing of EFF's FOIA requests by Friday, February 29, 2008.
2 As of this filing, the parties have reached no processing agreement, no documents have been
3 produced, and Mr. Warden has not indicated when EFF's requests will be processed.

4 Finally, the accelerated hearing schedule that EFF seeks will not unduly harm or prejudice
5 Defendants. In fact, Defendants have already proposed that this Court set an April 4, 2008 hearing
6 date for EFF's Motion for a Preliminary Injunction. *See* [Proposed] Order Establishing Hearing
7 Schedule For Plaintiff's Motion for a Preliminary Injunction (filed March 5, 2008).

8 Under the statutory scheme Congress established in the FOIA, it is clear that timing is a
9 critical component of expedited processing. Therefore, EFF's right to expedition under the FOIA
10 will be irretrievably lost if ODNI and DOJ are not ordered to process EFF's requests immediately.
11 Moreover, any further delay in the processing of EFF's FOIA requests will irreparably harm EFF's
12 ability, and that of the public, to obtain timely information vital to the current and ongoing debate
13 surrounding whether Congress should amend FISA, particularly to render telecommunications
14 carriers immune from legal liability for their complicity in the government's warrantless
15 surveillance program. EFF has been unable to negotiate a processing schedule with Defendants,
16 and Defendants will not be prejudiced by an accelerated briefing schedule — indeed, they have
17 already proposed that the Court adopt the hearing schedule that EFF now seeks. For these reasons,
18 EFF respectfully requests that this Court set the following expedited briefing and hearing schedule:
19 Defendants' opposition to EFF's Motion for a Preliminary Injunction will be filed no later than
20 March 21, 2008; EFF's reply to Defendants' opposition to EFF's Motion for a Preliminary
21 Injunction will be filed no later than March 26, 2008; and the Court's hearing on EFF's Motion for
22 a Preliminary Injunction will be held April 4, 2008, at 9:00 a.m.
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III. CONCLUSION

Accordingly, Plaintiff respectfully asks that the Court shorten the time for a hearing on EFF's Motion for a Preliminary Injunction to April 4, 2008 or the next available date.

DATED: March 11, 2008

/s/ Marcia Hofmann
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