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U.S. Department of Justice  
United States Attorney  
Southern District of New York

DGF

86 Chambers Street, 3rd Floor  
New York, New York 10007

July 25, 2013



**BY FAX (with prior permission)**  
The Honorable William H. Pauley  
United States District Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007-1312  
Fax Number: (212) 805-6390

Re: *ACLU et al. v. FBI et al.*, 11 Civ. 07562 (WHP)

Dear Judge Pauley:

We write respectfully to inform the Court that the Government learned of the ACLU's July 16, 2013, letter to the Court yesterday evening after the close of the business. Counsel for ACLU sent us a copy of the letter by e-mail yesterday evening, and apologetically indicated that he had inadvertently failed to send us a copy when it was sent to Your Honor.

The Government will be prepared to address the issues raised in the ACLU's letter at the status conference at noon today. If it would be helpful to the Court to have the Government's position in writing, the Government respectfully requests that the Court allow it to submit an additional letter to the Court tomorrow, Friday, July 26, 2013. The ACLU consents to this request.

We respectfully request that the Court docket this letter and make it a part of the record of this case.

Respectfully,

PREET BHARARA  
United States Attorney

By:

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Encl.

cc: Charles Sims, Esq. (by email)  
Alex Abdo, Esq. (by email)  
Counsel for Plaintiffs

NATIONAL SECURITY  
PROJECT



July 16, 2013

BY UPS

Honorable William H. Pauley III  
United States District Court for the  
Southern District of New York  
500 Pearl Street, Room 2210  
New York, NY 10007

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
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WWW.ACLU.ORG

Re: *American Civil Liberties Union et al. v. FBI et al.*  
Case No. 11 Civ 7562 (WHP)

Dear Judge Pauley:

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

Plaintiffs' counsel write to call the Court's attention to an order recently issued by the U.S. District Court for the District of Columbia in another Freedom of Information Act ("FOIA") suit concerning records similar to those at issue in this case. The order rejected arguments similar to those made by the government here in support of its request for a sixty-day stay of this litigation. See Minute Order, *Electronic Frontier Foundation v. Department of Justice (EFF v. DOJ)*, Civ. No. 12-1441-ABJ (D.D.C. July 9, 2013).

Like this case, *EFF v. DOJ* concerned a FOIA request for legal interpretations by the Foreign Intelligence Surveillance Court ("FISC") of surveillance authorities granted by the Foreign Intelligence Surveillance Act ("FISA").<sup>1</sup> As in this case, the government requested a sixty-day extension of an existing stay, in that case to allow it to "assess the impact of the government's declassification of information concerning intelligence collection pursuant to section 702 on both the Department's pending Motion for Summary Judgment and the underlying withholdings in th[e] case." Joint Status Report at 9, *EFF v. DOJ* (D.D.C. July 1, 2013).

On July 9, 2013, the court rejected that request, instead lifting the stay already in place and ordering the government to "assess its position

<sup>1</sup> This lawsuit concerns records related to Section 215 of the Patriot Act, 50 U.S.C. § 1861, while *EFF v. DOJ* seeks records related to section 702 of the FISA Amendments Act of 2008, 50 U.S.C. § 1881a. Both authorities are implicated by the recent disclosures about the government's surveillance activities conducted pursuant to FISA.

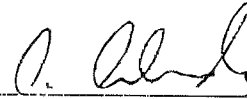
and make any additional disclosures it intends to make" by August 12. The court further ordered a briefing schedule on the government's pending motion for summary judgment that reflected the court's substantial agreement with the *EFF v. DOJ* plaintiffs that the government's proposed schedule would needlessly delay the litigation. Here is the text of the court's order in full:

MINUTE ORDER LIFTING STAY. In light of the status report filed by the parties on July 1, 2013 [Dkt. # 14], it is ORDERED that the stay on this action is lifted. It is FURTHER ORDERED that by August 12, 2013, defendant must assess its position and make any additional disclosures it intends to make in light of the developments described in the July 1 status report. It is FURTHER ORDERED that defendant shall file a notice with the Court on August 12, 2013, indicating whether any other materials were provided to the plaintiff in whole or in part, and stating whether it intends to rely upon the Motion for Summary Judgment filed on April 1, 2013 [Dkt. # 11], or if it intends to withdraw that motion and substitute a new motion for summary judgment. If the defendant intends to file a new motion, it will be due on or before August 26, 2013; plaintiff's opposition and combined cross-motion for summary judgment, if any, will be due on or before September 23, 2013; defendant's reply in support of its motion and combined opposition to plaintiff's cross-motion, if any, will be due on or before October 14, 2013; and plaintiff's reply in support of its cross-motion, if any, will be due on or before October 28, 2013. If defendant states on August 12 that the original Motion for Summary Judgment is still the operative document, plaintiff's opposition and combined cross-motion for summary judgment, if any, will be due on or before September 9, 2013; defendant's reply in support of its motion and combined opposition to plaintiff's cross-motion, if any, will be due on or before September 30, 2013; and plaintiff's reply in support of its cross-motion, if any, will be due on or before October 14, 2013. Signed by Judge Amy Berman Jackson on 7/9/13. (lcabj1) (Entered: 07/09/2013).

In considering the parties' recent joint status report to this Court, submitted by letter on July 8, 2013, Plaintiffs urge the Court to follow the *EFF v. DOJ* court's adoption of an expedited timeframe for the government to determine whether to make additional disclosures or defend its present withholdings.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Respectfully submitted,



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*Counsel for Plaintiffs*

Attachments: Joint Status Report, *EFF v. DOJ* (D.D.C. July 1, 2013)

cc: John D. Clopper (john.clopper@usdoj.gov)  
Emily Daughtry (emily.daughtry@usdoj.gov)