

-----X  
[REDACTED] : FILED UNDER SEAL  
AMERICAN CIVIL LIBERTIES UNION; :  
and AMERICAN CIVIL LIBERTIES UNION :  
FOUNDATION, :  
Plaintiffs, : DECLARATION OF  
[REDACTED] : DAVID W. SZADY

JOHN ASHCROFT, in his official :  
capacity as Attorney General of :  
the United States; ROBERT MUELLER, :  
in his official capacity as :  
[REDACTED]

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

----- [REDACTED] ----- FBI Federal Counterintelligence and Terrorism

----- [REDACTED] ----- FBI Federal Counterintelligence and Terrorism

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-cited action in which

~~activities conducted to protect against among other things~~

espionage, other intelligence activities, and international terrorist activities. *Id.* § 3.4(a).<sup>1</sup>

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

9. Accordingly, secrecy in conducting such foreign  
intelligence and counter-terrorism investigations is

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.

[REDACTED] the most law determined through its past and ongoing [REDACTED]

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 [REDACTED]

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

## The Use of NSIs 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

~~Yours sincerely, [Redacted] is attached to the FBI's letter.~~

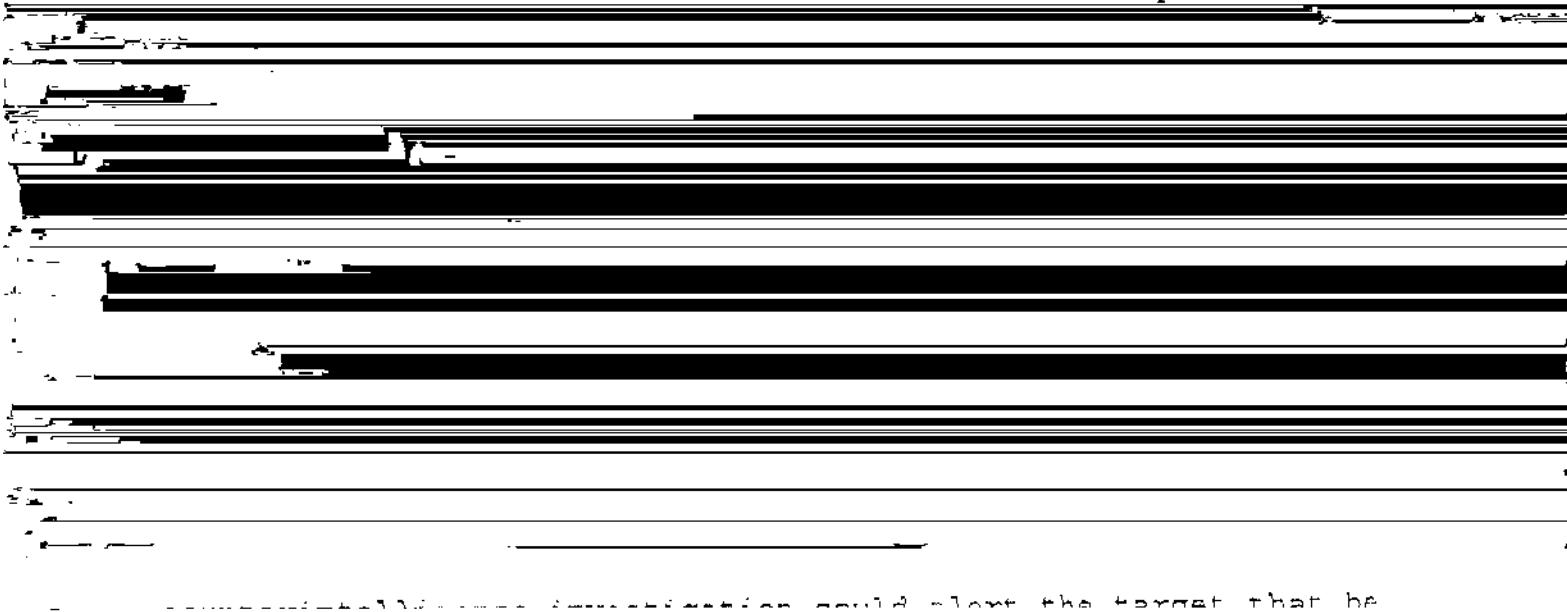
~~designated by the Director must certify in writing that the~~

records sought are relevant to an authorized investigation to

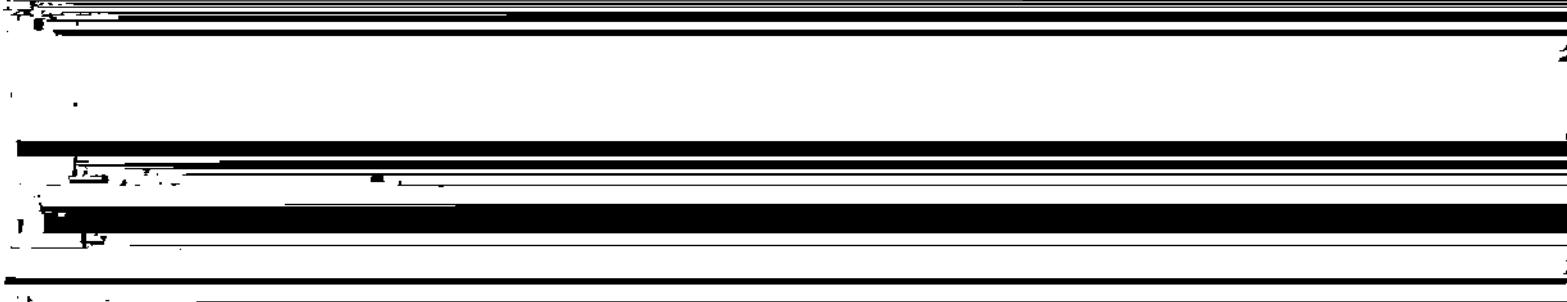
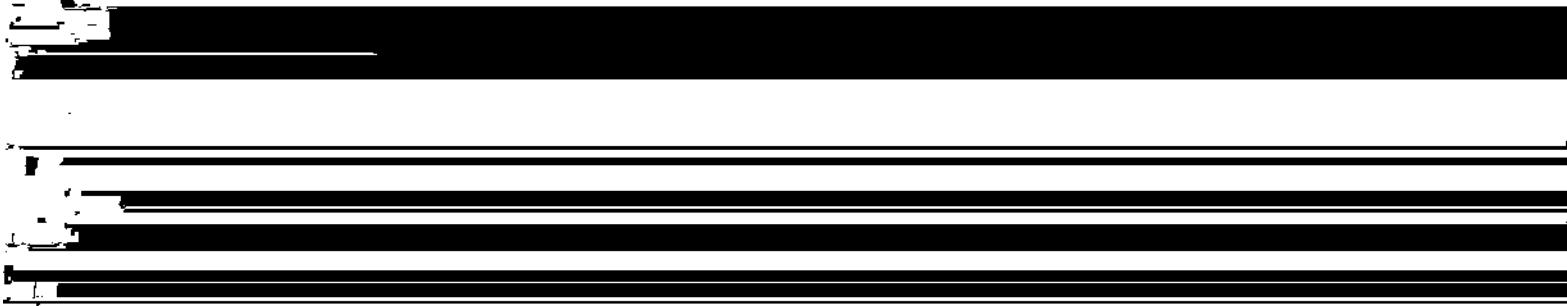
~~protect our national security, law enforcement, and intelligence~~

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

19. Disclosure of a particular NSL seeking information



..... disclosure would 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

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~~foreign intelligence organizations to know that~~ ~~mention~~

... concerned with the conduct of counter-intelligence and counter-terrorism investigations specifically

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

terrorist and foreign intelligence organizations have the

[REDACTED]

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

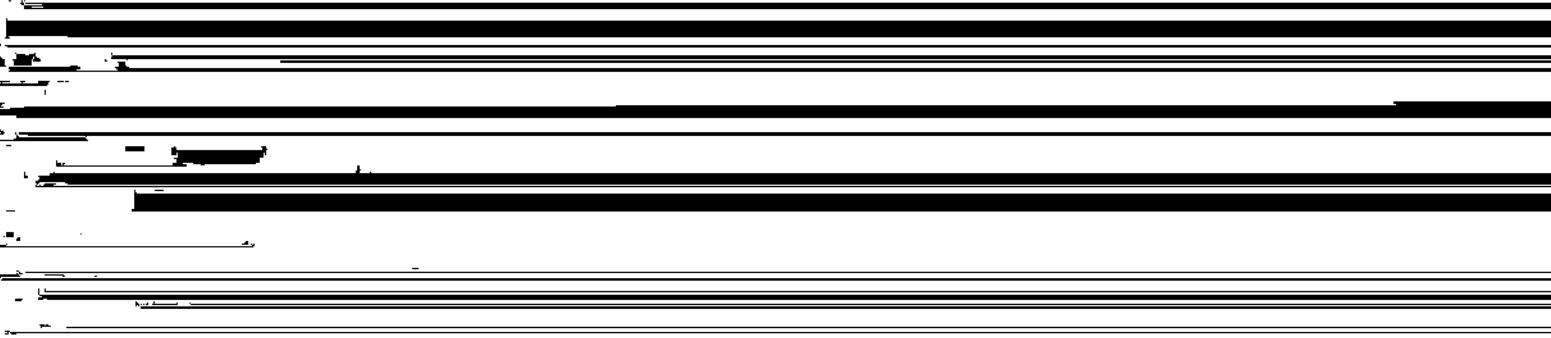
[REDACTED]

... is a particular communication

[REDACTED]

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

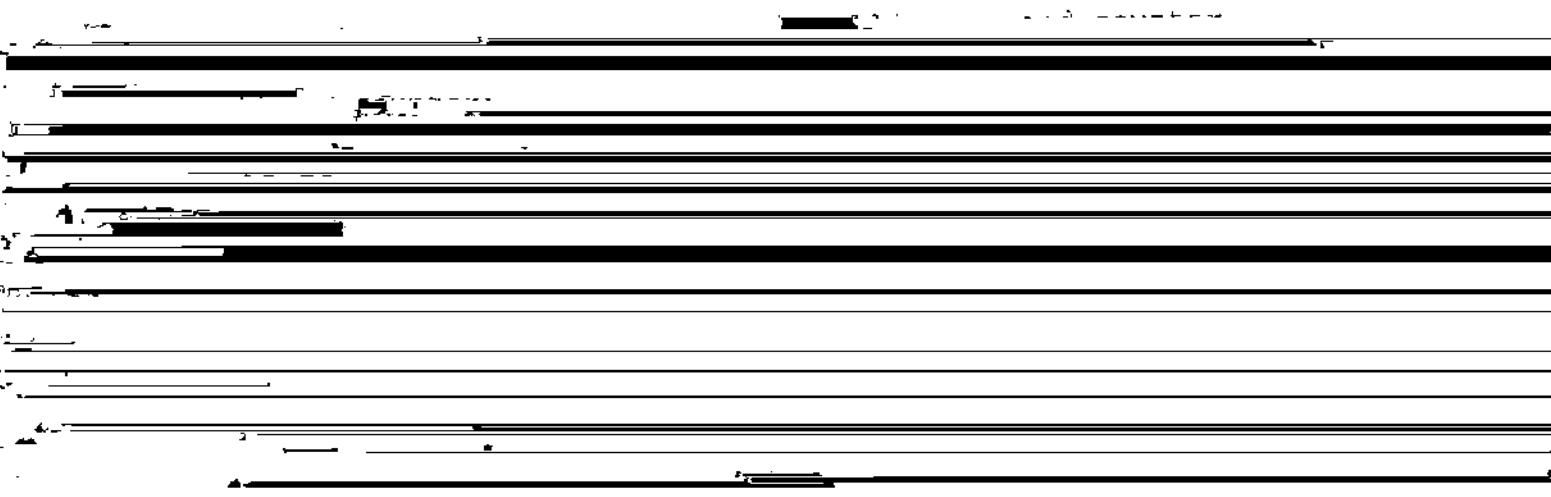
~~the employment of foreign operatives but also to~~



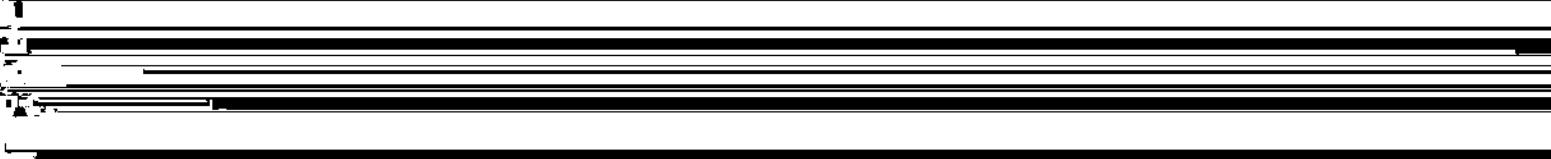
potential reprisals against family members of the suspected cooperator.

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.



~~Non-disclosure certifications are forward-looking and often long~~



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

the first time in the history of the world, the entire population of the globe has been gathered together in one place.

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