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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

13 Civ. 9198 (AT)

ANSWER TO FIRST AMENDED COMPLAINT

Defendants the National Security Agency (“NSA”), Central Intelligence Agency (“CIA”), Department of Defense (“DoD”), Department of Justice (“DOJ”), and Department of State (“State”) (collectively, “Defendants”), by and through their attorney, Preet Bharara, United States Attorney for the Southern District of New York, answer the First Amended Complaint for

Injunctive Relief (the “Complaint”) filed by plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, “Plaintiffs”) as follows:

1. Paragraph 1 states Plaintiffs’ characterization of this action, to which no response is required. To the extent a response is required, deny the allegations in Paragraph 1, except admit that this is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the production of agency records relating to Executive Order (“EO”) 12,333.

2. Deny the allegations of Paragraph 2, except admit that there have been media reports during the past several months regarding alleged U.S. Government intelligence efforts.

3. The allegations of Paragraph 3 set forth Plaintiffs’ characterization of undefined generalized public “discussion” and “attention,” to which no response is required. To the extent a response is required, deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 because the terms used in this paragraph are vague and ambiguous.

4. Paragraph 4 sets forth Plaintiffs’ characterization of EO 12,333 and the Foreign Intelligence Surveillance Act (“FISA”), to which no response is required. To the extent a response is required, deny the allegations of Paragraph 4, and respectfully refer the Court to EO 12,333 and FISA for a true and complete statement of their provisions.

5. The first sentence of Paragraph 5 sets forth Plaintiffs’ characterization of EO 12,333 and of unspecified “recent revelations” regarding the U.S. Government’s supposed “interpret[ation]” of its authority under EO 12,333, to which no response is required. To the extent a response is required, deny those allegations, and further respectfully refer the Court to EO 12,333 for a true and complete statement of its provisions. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 5

because the terms used are vague, ambiguous and argumentative. With respect to the third sentence of Paragraph 5, admit that the U.S. Government has in recent months declassified in whole or in part several documents relating to its surveillance programs, but deny knowledge or information sufficient to respond to the allegation characterizing the quantity of publicly available information “regarding the rules that apply to surveillance of Americans’ international calls and emails under EO 12,333.”

6. The allegations of Paragraph 6 state Plaintiffs’ policy contentions and characterize unspecified “news reports,” to which no response is required. To the extent a response is required, deny the allegations, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 regarding the content of unspecified “revelations” and “news reports,” and respectfully refer the Court to the “news reports” alluded to by Plaintiffs for a true and complete statement of their contents.

7. Deny the allegations in the first sentence of Paragraph 7 on the grounds that the phrase “inevitably sweeps up the communications of U.S. persons” is vague, ambiguous, and argumentative. The second sentence of Paragraph 7 characterizes Plaintiffs’ reasons for making their FOIA requests, to which no response is required; to the extent a response is required, deny knowledge or information sufficient to form a belief as to the truth of those allegations.

8. The allegations in the first sentence of Paragraph 8 constitute legal argument to which no response is required; to the extent a response is required, deny the allegations in the first sentence of Paragraph 8. The second sentence of Paragraph 8 sets forth Plaintiffs’ characterization of their FOIA requests, to which no response is required; to the extent a response is required, deny the allegations. The allegations in the third sentence of Paragraph 8 constitute legal argument to which no response is required; to the extent a response is required,

deny knowledge or information sufficient to form a belief as to the truth of the allegations because the terms used are vague, ambiguous, and argumentative, except aver that the legal standards that govern surveillance have been a subject of public discussion.

9. Paragraph 9 states legal contentions to which no response is required.

10. Paragraph 10 states legal contentions to which no response is required; to the extent a response is required, deny knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 10.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. Admit the allegations of Paragraph 13.

14. Admit the allegations of Paragraph 14.

15. Admit the allegations of Paragraph 15.

16. Admit the allegations of Paragraph 16.

17. Admit the allegations of Paragraph 17.

18. Admit the allegations of Paragraph 18.

19. Paragraph 19 sets forth Plaintiffs' characterization of their separate FOIA requests to each defendant, to which no response is required. To the extent a response is required, respectfully refer the Court to those requests for a true and complete statement of their contents.

20. Paragraph 20 sets forth Plaintiffs' characterization of their separate FOIA requests to each defendant, to which no response is required. To the extent a response is required, respectfully refer the Court to those requests for a true and complete statement of their contents.

21. Admit the allegations in Paragraph 21.

22. Paragraph 22 sets forth Plaintiffs' characterization of correspondence, to which no response is required, but admit that NSA had email and letter correspondence with Plaintiffs and released a number of documents in response to Plaintiffs' FOIA request, and respectfully refer the Court to that correspondence for a true and complete statement of its contents.

23. Paragraph 23 sets forth Plaintiffs' characterization of communications with unnamed representatives of DOJ's Office of Legal Counsel ("OLC"), to which no response is required; to the extent a response is required, deny that the communications between Plaintiffs and OLC began on June 25, 2013, and respectfully refer the Court to the referenced email communications for a true and complete statement of their contents.

24. Paragraph 24 sets forth Plaintiffs' characterization of correspondence from the CIA, to which no response is required; to the extent a response is required, deny the allegations to the extent they incompletely depict the correspondence, and respectfully refer the Court to the referenced correspondence for a true and complete statement of its contents.

25. Admit the allegations in Paragraph 25.

26. Admit the allegations in Paragraph 26.

27. Deny the allegation in Paragraph 27 that Plaintiffs received "no further responsive records." Deny that Plaintiffs submitted an administrative appeal "to" FBI, but aver that Plaintiffs submitted an appeal of FBI's response to DOJ's Office of Information Policy ("OIP") in connection with their request to FBI. Admit that Plaintiffs submitted administrative appeal letters on or about November 8, 2013, except that Plaintiffs' allegation characterizing the Defendants as having "constructive[ly] deni[ed]" Plaintiffs' FOIA requests sets forth a legal conclusion to which no response is required.

28. Deny the allegations of Paragraph 28 as to FBI, and aver that OIP acknowledged Plaintiffs' appeal letter relating to their request for FBI documents. Further deny the allegations of Paragraph 28 as to OLC. Admit the remaining allegations of Paragraph 28.

29. Admit the allegations in the first sentence of Paragraph 29. The second sentence of Paragraph 29 sets forth legal contentions to which no response is required; to the extent a response is required, deny the allegations, including, without limitation, as to NSA.

30. Paragraph 30 sets forth Plaintiffs' characterization of their appeal, dated January 9, 2014, of NSA's redaction decision, to which no response is required; to the extent a response is required, respectfully refer the Court to the referenced appeal for a true and complete statement of its contents.

31. Admit the allegations in the first three sentences of Paragraph 31. The fourth sentence of Paragraph 31 sets forth legal contentions to which no response is required; to the extent a response is required, deny the allegations.

32. Deny the allegations of Paragraph 32.

33. Deny the allegations of Paragraph 33.

34. Deny the allegations of Paragraph 34.

35. Deny the allegations of Paragraph 35.

36. Deny the allegations of Paragraph 36.

37. Deny the allegations of Paragraph 37.

38. The remaining unnumbered paragraph of the Complaint state Plaintiffs' requests for relief, to which no response is required. To the extent a response is required, deny that Plaintiffs are entitled to any relief.

39. Defendants deny all allegations in the Complaint not expressly admitted or denied.

DEFENSES

FIRST DEFENSE

Some or all of the requested documents are exempt from disclosure. *See* 5 U.S.C. § 552(b).

SECOND DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA.

THIRD DEFENSE

Plaintiffs have failed to exhaust available administrative remedies as to each Defendant, and, to the extent they have failed to exhaust such remedies, the Complaint should be dismissed for failure to state a claim and/or for lack of subject matter jurisdiction.

FOURTH DEFENSE

Plaintiffs' requests do not reasonably describe the records sought, and therefore do not comply with FOIA and/or do not trigger a search or production obligation.

FIFTH DEFENSE

Plaintiffs' requests are not enforceable under FOIA to the extent a reasonable search cannot be undertaken to identify and locate all responsive records.

WHEREFORE, Defendants respectfully request that the Court enter judgment dismissing the Complaint in its entirety, and grant Defendants such other relief as the Court deems proper, including Defendants' costs and disbursements herein.

Dated: New York, New York
March 3, 2014

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To: Counsel for Plaintiffs (by ECF)