UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREEDOM OF THE PRESS FOUNDATION and KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, Plaintiffs, v. DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, CENTRAL INTELLIGENCE AGENCY, and OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, Defendants.	No. 1:17-cv-9343-JGK

DECLARATION OF LEENA CHARLTON IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to 28 U.S.C. § 1746, I, Leena Charlton, declare and state as follows:

1. I am an attorney at the Knight First Amendment Institute at Columbia University ("Knight Institute" or the "Institute"). I have served in this role since September 9, 2019.

2. My colleagues submitted a Freedom of Information Act ("FOIA") request (the "Request") to the Department of Justice ("DOJ"), National Security Agency, Central Intelligence Agency, and the Office of the Director of National Intelligence on October 10, 2017, on behalf of the Freedom of the Press Foundation and the Knight Institute ("Plaintiffs"). The Request sought records concerning the restrictions imposed by statute, regulation, or the First Amendment on government surveillance targeting members of the news media or otherwise implicating the freedoms of speech, association, or the press.

3. Seeking the immediate release of all agency records responsive to the Request, as

required by FOIA, 5 U.S.C. § 552, Plaintiffs filed a complaint in this Court on November 29, 2017.

4. I represent Plaintiffs in this action.

5. I submit this declaration in support of Plaintiffs' Motion for Partial Summary Judgment.

6. Attached hereto as Exhibit 1 is a true and correct copy of a PowerPoint slide titled, "Policy Overview: Principle (cont.)," along with the title slide from that same presentation. The slides are part of a February 2018 presentation titled "News Media Policy," and were released in a Department of Justice, Criminal Division ("DOJ-Crim") supplemental production on June 27, 2018.

7. Attached hereto as Exhibit 2 is a true and correct copy of a form, titled "News Media Policy Consultation," released in a DOJ-Crim production on November 30, 2018.

8. Attached hereto as Exhibit 3 is a true and correct copy of a PowerPoint slide marked as FBI 12 and titled "Is this protected speech?," along with the title slide from that same presentation. The slides are part of a presentation titled "Legal Issues: First Amendment Protected Activity," and were released in a Federal Bureau of Investigation ("FBI") production on August 31, 2018 ("Aug. 31 Production").

9. Attached hereto as Exhibit 4 is a true and correct copy of PowerPoint slides marked FBI 34 and FBI 35 and respectively titled "Hypothetical" and "Still protected speech?," along with the title slide from that same presentation. The slides appear consecutively in a presentation titled "Legal/Policy Issues: Domestic Terrorism Investigations," and were released in the FBI's Aug. 31 Production.

10. Attached hereto as Exhibit 5 is a true and correct copy of a PowerPoint slide,

marked as FBI 40, titled "The First Amendment," along with the title slide from that same presentation. The slides are part of a presentation titled "Legal Issues in Domestic Terrorism Investigations," and were released in the FBI's Aug. 31 Production.

11. Attached hereto as Exhibit 6 is a true and correct copy of a PowerPoint slide marked as FBI 905, titled "Free Speech," along with the title slide from that same presentation. The slides are part of a presentation titled "Privacy & Civil Liberties Training: Social Media Tools," and was released in an FBI production on October 31, 2018 ("Oct. 31 Production").

12. Attached hereto as Exhibit 7 is a true and correct copy of a PowerPoint slide marked as FBI 909, titled "Public vs. Gov't Collection of 1st Amendment Activity," along with the title slide from that same presentation. The slides are part of a presentation titled "Privacy & Civil Liberties Training: Social Media Tools," and were released in the Oct. 31 Production.

13. Attached hereto as Exhibit 8 is a true and correct copy of PowerPoint slides marked as FBI 1033 and FBI 1034, respectively titled "[redacted] Issues with Media Leak Cases," and "[redacted] Obstacles," along with the title slide from that same presentation. The slides are part of a presentation titled "Media Leak Investigations," and were released in the FBI's Oct. 31 Production.

14. Attached hereto as Exhibit 9 is a true and correct copy of an unredacted PowerPoint slide marked as FBI 193 and titled "Hypotheticals," along with the title slide from that same presentation. The slides are part of a presentation titled "Legal/Policy Refresher: Domestic Terrorism Investigations," and were released in the FBI's Aug. 31 Production.

15. Attached hereto as Exhibit 10 is a true and correct copy of a PowerPoint slide marked as FBI 317 and titled "The Privacy Act," along with the title slide from that same presentation. The slides are part of a presentation titled "Legal Issues in Social Media Analysis,"

and were produced in the FBI's Aug. 31 Production.

16. Attached hereto as Exhibit 11 is a true and correct copy of a PowerPoint slide marked as FBI 903, titled "Overview," along with the title slide from that same presentation. The slides are part of a presentation titled "Privacy & Civil Liberties Training: Social Media Tools," and were released in the Oct. 31 Production.

17. Attached hereto as Exhibit 12 is a true and correct copy of a PowerPoint slide marked as FBI 914, titled "Mitigating Privacy & 1st Amendment Concerns," along with the title slide from that same presentation. The slides are part of a presentation titled "Privacy & Civil Liberties Training: Social Media Tools," and were released in the Oct. 31 Production.

18. Attached hereto as Exhibit 13 is a true and correct copy of a PowerPoint slide marked as FBI 269 and titled "Mitigating privacy and First Amendment concerns," along with the title slide from that same presentation. The slides are part of a presentation titled "Privacy and Civil Liberties Training for the [redacted]," and were released in the FBI's Aug. 31 Production.

19. Attached hereto as Exhibit 14 is a true and correct copy of §§ 16.9.3 (FBI 377–78), 18.5.6.4.8.1 (FBI 383–84), 18.5.6.4.8.2 (FBI 384), 18.6.6.3.3 (FBI 387), 18.6.6.3.4 (FBI 387–88), and 19.10.1 (FBI 394) of the Domestic Investigations and Operations Guide ("DIOG"), as produced in the FBI's Aug. 31 Production.

20. Attached hereto as Exhibit 15 is a true and correct copy of Appendix G of the 2016 DIOG, marked as FBI 395–422, as produced in the FBI's Aug. 31 Production.

21. Attached hereto as Exhibit 16 is a true and correct copy of §§ 3.7.2 (FBI 1016–17); 3.7.3 (FBI 1017); 3.7.5 (FBI 1017–18); 3.7.6 (FBI 1018); 3.7.7 (FBI 1018–19); and 3.8 (FBI 1020) from the Counterintelligence Division Policy Directive and Policy Guide reviewed on November 1, 2018, marked as FBI 1016–20, along with the Guide's cover page. These pages

were released in the FBI's Oct. 31 Production.

22. Attached hereto as Exhibit 17 is a true and correct copy of unredacted DIOG §§ 16.9.3, 18.5.6.4.8.1, 18.5.6.4.8.2, 18.6.6.3.3, and 19.10, from a document identified by the Intercept as the unredacted, official 2011 DIOG, available at https://www.documentcloud.org/documents/3416775-DIOG-Redactions-Marked-Redacted.html, and a true and correct copy of Appendix G.12, from a document identified by the Intercept as the unredacted, official version of Appendix G, dated October 16, 2013, and available at https://www.documentcloud.org/documents/2934087-DIOG-Appendix-Media-NSLs.html.

23. Attached hereto as Exhibit 18 is a true and correct copy of a document titled "National Security Letters," marked as FBI 1066–67. These pages were released in the FBI's Oct. 31 Production.

24. Attached hereto as Exhibit 19 is a true and correct copy of a November 24, 2015 document titled "Termination Procedures for National Security Letter Nondisclosure Requirement," available at https://www.fbi.gov/file-repository/nsl-ndp-procedures.pdf.

25. Attached hereto as Exhibit 20 is a true and correct copy of unredacted DIOG § 18.6.6.3.4 from a document identified by the Intercept as the unredacted, official 2011 DIOG, available at https://theintercept.com/document/2016/06/30/fbi-diog-appendix-on-media-national-security-letters-nsls.

26. Attached hereto as Exhibit 21 is a true and correct copy of a document titled "Best Practices for Media Policy," marked as FBI 1052–54. These pages were released in the Oct. 31 Production.

27. Attached hereto as Exhibit 22 is a true and correct copy of a PowerPoint slide marked as FBI 776 and titled "Telephone Toll Billing Records of Members of Media & News

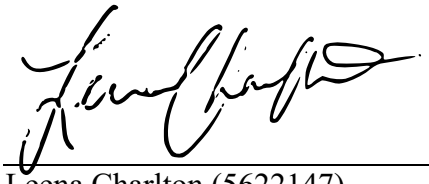
Organizations," along with the title slide from that same presentation. The slides are part of a presentation titled "National Security Letters," and were released in the FBI's Oct. 31 Production.

28. Attached hereto as Exhibit 23 is a true and correct copy of a letter to Senator Ron Wyden from Stephen E. Boyd, Assistant Attorney General, dated March 5, 2018, available at http://www.documentcloud.org/documents/4596074-3-5-18-Boyd-Letter-to-Wyden.html.

29. Attached hereto as Exhibit 24 is a true and correct copy of DIOG § 18.6.6.3.3 from an FBI FOIA production released to the Electronic Privacy Information Center on February 25, 2019, available at https://epic.org/nsl/foia/fbi/EPIC-17-06-13-FBI-FOIA-20190225-Production-pt1.pdf.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: February 21, 2020



Leena Charlton (5622147)
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
leena.charlton@knightcolumbia.org
(646) 745-8500

Counsel for Plaintiffs