

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2014 APR -3 PM 12: 28

LEEANN FLYNN HALL
CLERK OF COURT

IN RE APPLICATION OF THE FEDERAL
BUREAU OF INVESTIGATION FOR AN
ORDER REQUIRING THE PRODUCTION
OF TANGIBLE THINGS

Docket No. Misc. 14-01

**MOTION OF THE CENTER FOR NATIONAL SECURITY STUDIES FOR LEAVE TO
FILE BRIEF OF AMICUS CURIAE NOT EXCEEDING 7000 WORDS**

On December 18, 2013, this Court granted the Center for National Security Studies (“CNSS”) leave to file an amicus brief in the miscellaneous docket making arguments against the legality of the current program of bulk collection of telephony metadata under Section 501 of the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C. § 1861. *In re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things*, BR 13-158 (Dec. 18, 2013) (McLaughlin, J.). Relying on Fed. R. App. P. 29 for general guidance as to amicus filings, *see id.* at 6 & n.3, the Court set a page limit of 15 pages for this filing.

CNSS hereby moves for leave to file the attached brief, which is less than 7000 words in length. It does so for two reasons. First, 7000 words is the alternative to a 15-page limit provided in Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 29(b) (amicus brief may not exceed half the permitted length of parties’ principal briefs); Fed. R. App. P. 32(a)(7) (allowing parties to file briefs up to 30 pages or 14,000 words, at their choice).

Second, it has proved difficult, despite our good faith efforts, to limit our discussion to 15 pages, given the number and substantiality of different legal issues that the Court authorized us to cover. The brief discusses developments involving the telephony metadata collection program since December, showing why this brief is still legally significant, analyzes the history and

requirements of Section 501 more fully than any presentation yet made on a public record in this Court, and does the same for the question of ratification-by-renactment, both with respect to applicable decisions of the United States Supreme Court and other federal courts as well as the implications for democratic governance of the use of the doctrine in this matter. Unlike in the usual case, this amicus brief is not merely supplementing a party's brief. It is the only brief filed in this Court arguing against the lawfulness of the program under Section 501.

Undersigned counsel spoke with counsel for the United States about whether they support or oppose this motion, and they have no position either way.


WHEREFORE, CNSS respectfully requests leave to file the attached brief.

April 3, 2014

Michael Davidson, D.C. Bar No. 449007
3753 McKinley Street, NW
Washington, DC 20015
(202) 362-4885
mdavid2368@aol.com

Of Counsel

Respectfully submitted,



Paul M. Smith, D.C. Bar No. 358870
Michael T. Borgia, D.C. Bar No. 1017737
Jenner & Block, LLP
1099 New York Avenue, N.W.,
Suite 900
Washington, DC 20001
(202) 639-6000 (telephone)
(202) 639-6066 (fax)

Kate A. Martin, D.C. Bar No. 949115
Center for National Security Studies
1730 Pennsylvania Ave., N.W., S. 700
Washington, D.C. 20006
(202) 721-5650 (telephone)
(202) 530- 0128 (fax)
kmartin@cnss.org


Joseph Onek, D.C. Bar No. 43611
The Raben Group
1640 Rhode Island Ave., N.W., S. 600
Washington, D.C. 20036
(202) 587-4942 (telephone)
(202) 463-4803 (fax)
jonek@rabengroup.com

*Counsel for Movant Center for National
Security Studies*

CERTIFICATE OF SERVICE

I, Paul M. Smith, hereby certify that on April 3, 2014, pursuant to procedures established by the Security and Emergency Planning Staff, United States Department of Justice under FISC Rule 1, I caused copies of the foregoing Motion of the Center for National Security Studies for Leave to File Brief of Amicus Curiae Not Exceeding 7000 Words, together with the Brief of Amicus Curiae Center for National Security Studies on the Lack of Statutory Authority for this Court's Bulk Telephone Metadata Orders to be hand-delivered to:

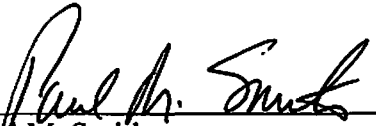
Christine Gunning
United States Department of Justice
Litigation Security Group
145 N Street, NE
Suite 2W-115
Washington, DC 20530



Paul M. Smith

CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief of *amicus curiae* the Center for National Security Studies contains 6,928 words, excluding the caption, the tables and the signature block.



Paul M. Smith