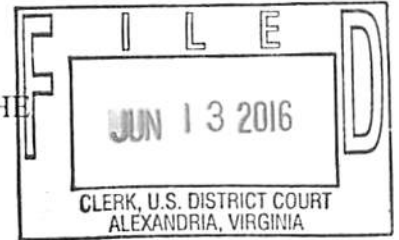


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



IN THE MATTER OF THE	)	No. 1:13EC297
APPLICATION OF THE UNITED	)	
STATES OF AMERICA FOR AN ORDER	)	
AUTHORIZING THE USE OF A PEN	)	
REGISTER/TRAP AND TRACE DEVICE	)	
ON AN ELECTRONIC MAIL ACCOUNT	)	
	)	
IN THE MATTER OF THE SEARCH AND	)	No. 1:13SW522
SEIZURE OF INFORMATION	)	
ASSOCIATED WITH	)	
ed_snowden@lavabit.com THAT IS	)	
STORED AT PREMISES CONTROLLED	)	
BY LAVABIT LLC	)	
	)	No. 13-1

In re Grand Jury

**CONSENT MOTION TO UNSEAL**

The United States of America and Ladar Levison through undersigned counsel files this consent motion and proposed order to (i) unseal redacted versions of orders, pleadings, and transcripts; and (ii) vacate nondisclosure orders.

**I. Background**

On December 14, 2015, Ladar Levison filed a Motion to Unseal Records and Vacate Non-Disclosure Orders in case numbers 1:13EC297, 1:13SW522, and No. 13-1. (1:13EC297, Dkt. # 14; 1:13SW522, Dkt. #25). The United States opposed the motion on the basis that public disclosure of the identity of the target of the investigation and the target's email address would reveal a matter occurring before the grand jury, which is prohibited under Rule 6(e)(2) of the

Federal Rules of Criminal Procedure. (1:13EC297, Dkt. #16; 1:13SW522, Dkt. #27). The government asked the Court for a protective order to:

1. Allow Mr. Levison to disclose to the subscriber the nature of the proceedings and the underlying unredacted pleadings and orders;
2. Require the public filing of previously filed pleadings, transcripts, and orders with redactions for only the identity of the subscriber and the subscriber's email address; and
3. Require the government to move to unseal any information remaining under seal upon completion of the grand jury investigation.

On January 7, 2016, the Court entered the protective order. (1:13EC297, Dkt. #17; Dkt. #28). Ladar Levison noticed an appeal on February 3, 2016. (Case No. 16-4052, Dkt. #1). On February 24, 2016, the government filed the redacted documents, and they were placed on the public record. In regard to one of these documents (Document 36-15 in Case 1:13-sw-522-CMH), the government inadvertently failed to redact the subject email address. On March 21, 2016, the United States filed an unopposed motion to remand the case to ask the court to authorize additional disclosures of information under seal. (Case No. 16-4052, Dkt. 16). This motion was granted on April 7, 2016. (Case No. 16-4052, Dkt. 18).

## **II. Analysis**

The parties agree there is no longer any reason to redact from the publicly filed materials or require non-disclosure of the subscriber's name and email address. *See In re Charlotte Observer*, 921 F.2d 47, 50 (4th Cir.1990) (finding that "the cat [was] out of the bag" when a judge in open court and in the presence of reporters inadvertently stated the name of an unindicted subject of a grand jury investigation, and vacating an injunction against further publication).

The parties further agree that the unsealed documents should continue to be redacted of sensitive, nonpublic facts detailed in *ex parte* motions, applications, and a search warrant affidavit because the disclosure of such facts are either protected from disclosure under Fed.R.Crim.P. 6(e) or could damage the ongoing investigation. *See In re Application of the United States of America for an Order Pursuant to 18 U.S.C. Section 2703(d)*, 707 F.3d 283, 293-94 (4<sup>th</sup> Cir. 2013); *see also ACLU v. Holder*, 673 F.3d 245, 253 (4<sup>th</sup> Cir. 2011) (noting government's compelling interest in protecting the integrity of ongoing investigations).

Finally, the parties agree that certain other information, such as the home address of Mr. Levison, should be redacted pursuant to Fed.R.Crim.P. 49.1 and EDVA Local Rule 49.


### III. Conclusion

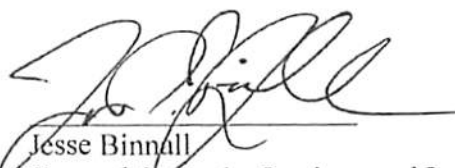
For the foregoing reasons, the parties request that the Court enter the proposed consent order to vacate non-disclosure orders and to unseal and file publicly the redacted pleadings, orders, and transcripts attached to that order.

Respectfully Submitted,

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