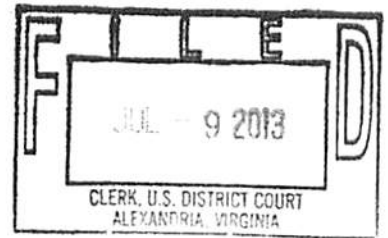


DOCKET 1

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

Alexandria Division



IN THE MATTER OF THE)
APPLICATION OF THE UNITED) **FILED UNDER SEAL**
STATES OF AMERICA FOR AN ORDER) No. 1:13EC297
AUTHORIZING THE USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE)
ON AN ELECTRONIC MAIL ACCOUNT)

**MOTION OF THE UNITED STATES
FOR AN ORDER TO SHOW CAUSE**

The United States, through the undersigned counsel, pursuant to Title 18, United States Code, Section 401, hereby moves for the issuance of an order directing Ladar Levison, the owner and operator of Lavabit LLC, an electronic communications service provider, to show cause why Lavabit LLC has failed to comply with the orders entered June 28, 2013, in this matter and, as a result, why this Court should not hold Mr. Levison and Lavabit LLC in contempt for its disobedience and resistance to these lawful orders. The United States further requests that the Court convene a hearing on this motion on July 16, 2013, at 10:00 a.m., and issue a summons directing Mr. Levison to appear before this Court on that date. In support of this motion, the United States represents:

1. The United States is conducting a criminal investigation of Edward Snowden for violations of a number of federal statutes, including 18 U.S.C. § 641 (theft of government property), 18 U.S.C. § 793(d) (unlawful communication of national defense information), and 18 U.S.C. § 798(a)(3) (disclosure of classified information relating to communication intelligence activities). On June 14, 2013, a criminal complaint was filed charging Snowden

with these offenses. Snowden remains a fugitive.

2. The investigation has revealed that Snowden has utilized and continues to utilize an email account obtained through Lavabit LLC, an electronic communications service provider (*see* <http://lavabit.com/>). On or about June 8, 2013, a grand jury subpoena was served on Lavabit LLC through Ladar Levison for billing and subscriber information for Snowden's Lavabit email account. Mr. Levison provided that information. On June 10, 2013, the United States obtained an order pursuant to 18 U.S.C. § 2703(d) directing Lavabit LLC to provide, within ten days, additional records and information about Snowden's email account. Mr. Levison received that order on June 11, 2013. Mr. Levison responded by mail, which was not received by the government until June 27, 2013. Mr. Levison provided very little of the information sought by the June 10, 2013 order.

3. On June 28, 2013, the United States obtained a pen register/trap and trace order on Snowden's email account, a copy of which is attached together with the application for that order.

4. On June 28, 2013, FBI special agents met Mr. Levison at his residence in Dallas, Texas, and discussed the prior grand jury subpoena served on Lavabit LLC and the pen register order entered that day. Mr. Levison did not have a copy of the order when he spoke with the agents, but he received a copy from the FBI within a few minutes of their conversation. Mr. Levison told the agents that he would not comply with the pen register order and wanted to speak to an attorney. It was unclear whether Mr. Levison would not comply with the order because it was technically not feasible or difficult or because it was not consistent with his business practice of providing secure, encrypted email service for his customers.

5. On June 28, 2013, after this conversation with Mr. Levison, the United States obtained an Order Compelling Compliance Forthwith, which directed Lavabit to comply with the pen register order. Copies of that motion and order are attached.

6. Since June 28, 2013, the FBI has made numerous attempts, without success, to speak and meet directly with Mr. Levison to discuss the pen register order and his failure to provide "all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device" as required by that order. As of this date, Lavabit LLC has not complied with the order.

7. The United States requests that the Court enter the attached proposed order directing Mr. Levison to show cause why Lavabit LLC has failed to comply with the pen register order and why, therefore, he should not be held in contempt. The United States requests that this show cause hearing be scheduled for July 16, 2013, at 10:00 a.m., and that a summons be issued directing Mr. Levison to appear before this Court on that date.

8. The June 10, 2013 Section 2703(d) Order and the June 28, 2013 pen register order remain under seal. In addition, these orders provide that Lavabit LLC shall not disclose the existence of the government's applications and the orders to the subscriber (Snowden) or to any other persons unless otherwise authorized to do so by court order, except that Lavabit LLC may disclose the orders to an attorney for the purpose of obtaining legal advice regarding these orders. The United States requests that these documents remain under seal, that the non-disclosure

provisions of the orders remain in effect, and that this motion and order and any subsequent pleadings and/or proceedings regarding this motion also be sealed.

Respectfully submitted,

Neil H. MacBride
United States Attorney

By: 

James L. Trump
United States Attorney's Office
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700

PROPOSED
ORDER TO SHOW CAUSE

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

Alexandria Division

IN THE MATTER OF THE)	UNDER SEAL
APPLICATION OF THE UNITED)	
STATES OF AMERICA FOR AN ORDER)	No. 1:13EC297
AUTHORIZING THE USE OF A PEN)	
REGISTER/TRAP AND TRACE DEVICE)	
ON AN ELECTRONIC MAIL ACCOUNT)	

ORDER TO SHOW CAUSE

Upon motion of the United States pursuant to Title 18, United States Code, Section 401, good cause having been shown, IT IS HEREBY ORDERED:

1. Ladar Levison, the owner and operator of Lavabit LLC, an electronic communications service provider, shall appear before this Court on July 16, 2013, at 10:00 a.m., at which time he shall show cause why Lavabit LLC has failed to comply with the orders entered June 28, 2013, in this matter and why this Court should not hold Mr. Levison and Lavabit LLC in contempt for its disobedience and resistance to these lawful orders;
2. The Clerk's Office shall issue a summons for the appearance of Mr. Levison on July 16, 2013, at 10:00 a.m. The Clerk's Office shall provide the Federal Bureau of Investigation with a certified copy of the summons for service on Mr. Levison and Lavabit LLC.
3. The Federal Bureau of Investigation shall serve the summons on Mr. Levison together with a copy of the Motion of the United States for an Order to Show Cause and a certified copy of this Order to Show Cause.
4. The sealing and non-disclosure provisions of the June 10, 2013 Section 2703(d) order and the June 28, 2013 pen register order shall remain in full force and effect. Mr. Levison

and Lavabit LLC shall not disclose the existence of these applications, motions, and court orders, including this Order to Show Cause, to the subscriber or to any other persons unless otherwise authorized to do so by court order, except that Lavabit LLC may disclose the orders to an attorney for the purpose of obtaining legal advice regarding these orders.

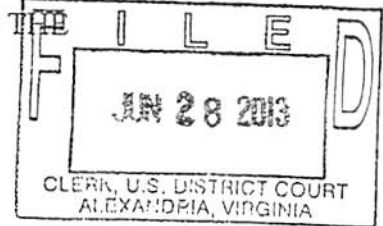
5. This Order, the Motion of the United States for an Order to Show Cause, and any subsequent pleadings and proceedings regarding this matter shall be placed under seal until further order of this Court.

Entered in Alexandria, Virginia, this ____ day of July, 2013

Claude M. Hilton
United States District Judge

PEN REGISTER APPLICATION AND ORDER

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



IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR AN ORDER AUTHORIZING THE
INSTALLATION AND USE OF A PEN
REGISTER/TRAP AND TRACE DEVICE
ON AN ELECTRONIC MAIL ACCOUNT

(Under Seal)

1:13 EC 297

APPLICATION

Andrew Peterson, Assistant United States Attorney for the Eastern District of Virginia, applies to the Court pursuant to 18 U.S.C. § 3122 for an Order authorizing the installation and use of a pen register/trap and trace device or process ("pen/trap device") on all electronic communications being sent from or sent to the account associated with ed_snowden@lavabit.com, that is registered to subscriber Edward J. Snowden, at Lavabit, LLC ("Lavabit"), (hereinafter referred to as the "SUBJECT ELECTRONIC MAIL ACCOUNT").

In support of this Application, s/he states the following:

1. Applicant is an "attorney for the Government" as defined in Rule 1(b)(1) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. §§ 3122(a)(1) and 3123(a)(1), may apply for an ex parte order authorizing the installation and use of pen register and trap and trace devices and processes anywhere within the United States.

2. I certify that this request is made in connection with the criminal investigation by Federal Bureau of Investigation into possible violations of 18 U.S.C. §§ 641, 793(d) [REDACTED], and 798(a)(3).

3. In support of this Application, I proffer that I have discussed this investigation with an agent of the Federal Bureau of Investigation, who has informed me that he is involved in the criminal investigation of Edward J. Snowden for evidence of possible violations of 18 U.S.C. §§ 641, 793(d) [REDACTED], and 798(a)(3). Through my discussions with this agent, I have learned that information likely to be transmitted to or from the SUBJECT ELECTRONIC MAIL ACCOUNT

is relevant to the ongoing criminal investigation: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Based on the foregoing information, I certify that the information likely to be obtained from the pen/trap device on the SUBJECT ELECTRONIC MAIL ACCOUNT is relevant to an ongoing criminal investigation in that this information will concern the aforementioned offenses and will aid in the investigation.

5. The term "pen register," as defined at 18 U.S.C. § 3127(3), as amended, is "a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted." A "trap and trace device," defined at 18 U.S.C. § 3127(4), as amended, is "a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication."

6. In the traditional telephone context, a pen/trap device collects origin and destination information such as the telephone numbers dialed for a telephone call. The same principles apply in the context of Internet electronic mail: a pen/trap device collects addressing information contained in mail headers. Mail headers are portions of Internet communications

that contain addressing information analogous to "To:" and "From:" addresses for traditional letters and to origin and destination telephone numbers for telephone calls. Importantly, mail headers (except the subject lines of e-mails, which may themselves include content) do not contain the contents of electronic communications. Accordingly, this Application does not seek authority to intercept the contents of any electronic communications, and, in particular, does not seek the subject lines of electronic mails.

7. In the instant investigation, the pen/trap device sought by this Application will intercept electronic mail headers. According to Federal Bureau of Investigation agents, the device will only retrieve all non-content dialing, routing, addressing, and signaling information (including Internet Protocol addresses, port number assignments, and electronic mail addresses). Specifically, the "To:" portion of the mail header will be the destination electronic mail address in the mail headers; while the "From:" portion of the mail header will be the sender's electronic mail address (in this case, the user of the SUBJECT ELECTRONIC MAIL ACCOUNT). The device will not capture any "Subject:" portion, which could possibly contain content. The system will also record the date and time of the initiation and receipt of such transmissions, and record their duration. This system also records user log-in data (date, time, duration, and Internet Protocol address of all log-ins to the SUBJECT ELECTRONIC MAIL ACCOUNT).

8. Based upon the above certification, and pursuant to 18 U.S.C. §§ 3122 and 3123, I hereby request that the Court issue an Order authorizing the installation and use of a pen/trap device to capture all non-content dialing, routing, addressing, and signaling information (including Internet Protocol addresses, port number assignments, and electronic mail addresses), sent to or from the SUBJECT ELECTRONIC MAIL ACCOUNT, to record the date and time of the initiation and receipt of such transmissions, to record the duration of the transmissions, and to record user log-in data (date, time, duration, and Internet Protocol address of all log-ins) on the SUBJECT ELECTRONIC MAIL ACCOUNT, all for a period of sixty (60) days from the date of such Order or the date the monitoring equipment becomes operational, whichever occurs later.

9. Pursuant to 18 U.S.C. § 3123(b)(2), I further request that the Court order the Lavabit to furnish information, facilities, and technical assistance necessary to accomplish the installation of the pen/trap device unobtrusively, with reasonable compensation to be paid by the Federal Bureau of Investigation for reasonable expenses incurred in providing such facilities and assistance.

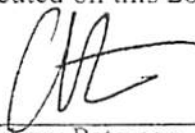
10. Lavabit is a provider of electronic communication service to the public. The United States (including but not limited to the Federal Bureau of Investigation) may find it necessary to install and use its own pen/trap device on a packet-switched data network of the public provider. In that event, as required by 18 U.S.C. § 3123(a)(3), the United States shall ensure that a record is maintained that will identify: (a) any officer(s) who installed the device and any officer(s) who accessed the device to obtain information from the network; (b) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (c) the configuration of the device at the time of its installation and any subsequent modification thereof; and (d) any information which has been collected by the device. To the extent that the pen/trap device can be set to automatically record this information electronically, the record shall be maintained electronically throughout the installation and use of the pen/trap device. Pursuant to 18 U.S.C. § 3123(a)(3)(B), as amended, such record(s) shall be provided ex parte and under seal to this Court within 30 days of the termination of the Order (including any extensions thereof).

11. I also respectfully request pursuant to 18 U.S.C. § 3123(d) that this Application and Order be filed under seal until unsealed by the Court, and that Lavabit be directed not to disclose the existence of this investigation and Order. Based on the information provided in this application, I believe that disclosure of the requested Order may seriously jeopardize the investigation in that the parties currently using the SUBJECT ELECTRONIC MAIL ACCOUNT will cease to use the account to conduct their illegal activities and may destroy evidence of past activities. Notwithstanding this request, I would ask that copies of the Order be furnished to the Federal Bureau of Investigation, the United States Attorney's Office, and Lavabit.

12. WHEREFORE, it is respectfully requested that the Court grant an Order (1) that authorizes the installation and use of a pen/trap device to capture all non-content dialing, routing, addressing, and signaling information (including Internet Protocol addresses, port number assignments, and electronic mail addresses) sent to or from the SUBJECT ELECTRONIC MAIL ACCOUNT, to record the date and time of the initiation and receipt of such transmissions, to record the duration of the transmissions, and to record user log-in data (date, time, duration, and Internet Protocol address of all log-ins) on the SUBJECT ELECTRONIC MAIL ACCOUNT, all for a period of sixty (60) days from the date of such Order or the date the monitoring equipment becomes operational, whichever occurs later; (2) that directs Lavabit to furnish the United States (including but not limited to the Federal Bureau of Investigation) forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the device unobtrusively and with a minimum of interference to the service presently accorded persons whose transmissions are the subject of the pen/trap device; (3) that requires that Lavabit be compensated by the Federal Bureau of Investigation for reasonable expenses incurred in providing technical assistance; (4) that places this Application and Order under seal until otherwise ordered by the Court; (5) that allows copies of such Order to be furnished to the Federal Bureau of Investigation, the United States Attorney's Office, and Lavabit; and (6) that directs that Lavabit and its agents and employees, not disclose to the listed subscriber, or to any other person, the existence of the pen/trap device or of this investigation unless or until otherwise ordered by the Court.

The foregoing is based on information provided to me in my official capacity by agents of the Federal Bureau of Investigation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on this 28th day of June, 2013.



Andrew Peterson
Assistant United States Attorney

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

Alexandria Division

IN THE MATTER OF THE APPLICATION)	
OF THE UNITED STATES OF AMERICA)	
FOR AN ORDER AUTHORIZING THE)	(Under Seal)
INSTALLATION AND USE OF A PEN)	
REGISTER/TRAP AND TRACE DEVICE)	1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)	

ORDER

This matter having come before the Court pursuant to an Application under 18 U.S.C. § 3122, by Andrew Peterson, Assistant United States Attorney, an attorney for the Government as defined by Fed. R. Crim. P. 1(b)(1), requesting an Order under 18 U.S.C. § 3123, authorizing the installation and use of a pen register and the use of a trap and trace device or process ("pen/trap device") on all electronic communications being sent from or sent to the account associated with ed_snowden@lavabit.com that is registered to subscriber Edward Snowden at Lavabit, LLC (hereinafter referred to as the "SUBJECT ELECTRONIC MAIL ACCOUNT"). The Court finds that the applicant has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation into possible violation(s) of 18 U.S.C. §§ 641, 793(d) [REDACTED], and 798(a)(3) by Edward J. Snowden.

IT APPEARING that the information likely to be obtained by the pen/trap device is relevant to an ongoing criminal investigation of the specified offense;

IT IS ORDERED, pursuant to 18 U.S.C. § 3123, that a pen/trap device may be installed and used by Lavabit and the Federal Bureau of Investigation to capture all non-content dialing, routing, addressing, and signaling information (as described and limited in the Application), sent from or sent to the SUBJECT ELECTRONIC MAIL ACCOUNT, to record the date and time of the initiation and receipt of such transmissions, to record the duration of the transmissions, and to record user log-in data (date, time, duration, and Internet Protocol address of all log-ins) on the

SUBJECT ELECTRONIC MAIL ACCOUNT, all for a period of sixty (60) days from the date of such Order or the date the monitoring equipment becomes operational, whichever occurs later;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(b)(2), that Lavabit shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device unobtrusively and with minimum interference to the services that are accorded persons with respect to whom the installation and use is to take place;

IT IS FURTHER ORDERED that the United States take reasonable steps to ensure that the monitoring equipment is not used to capture any "Subject:" portion of an electronic mail message, which could possibly contain content;

IT IS FURTHER ORDERED that Lavabit shall be compensated by the Federal Bureau of Investigation for reasonable expenses incurred in providing technical assistance;

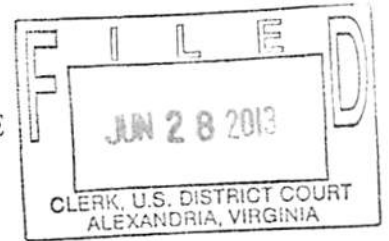
IT IS FURTHER ORDERED that, in the event that the implementing investigative agency seeks to install and use its own pen/trap device on a packet-switched data network of a public provider, the United States shall ensure that a record is maintained which will identify: (a) any officer(s) who installed the device and any officer(s) who accessed the device to obtain information from the network; (b) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (c) the configuration of the device at the time of its installation and any subsequent modification thereof; and (d) any information which has been collected by the device. To the extent that the pen/trap device can be set to automatically record this information electronically, the record shall be maintained electronically throughout the installation and use of the pen/trap device. Pursuant to 18 U.S.C. § 3123(a)(3)(B), as amended, such record(s) shall be provided ex parte and under seal to this Court within 30 days of the termination of this Order, including any extensions thereof;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(d), that this Order and the Application be sealed until otherwise ordered by the Court, and that copies of such Order may be

COMPULSION MOTION AND ORDER

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

Alexandria Division



IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING THE) (Under Seal)
INSTALLATION AND USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE) 1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)

MOTION FOR ENTRY OF AN ORDER TO COMPEL

The United States, by and through its undersigned counsel, hereby requests the Court enter an Order directing Lavabit, LLC, to comply with the Court's June 28, 2013 Pen Register/Trap and Trace Order. In support of the motion the United States declares as follows:

1. On June 28, 2013, at approximately 4 p.m., this Court entered an Order pursuant to 18 U.S.C. § 3123 authorizing the installation and use of a pen register and the use of a trap and trace device ("pen/trap device") on all electronic communications being sent from or sent to the electronic mail account ed_snowden@lavabit.com. That e-mail account is controlled by Lavabit, LLC.

2. In its Order, the Court found that the information to be collected by the pen/trap device would be relevant to an ongoing criminal investigation. In addition, the Court ordered Lavabit "shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device."

3. The Federal Bureau of Investigation served a copy of the Order on Lavabit that same afternoon. A representative of Lavabit stated that it could not provide the requested information because the user of the account had enabled Lavabit's encryption services, and thus

Lavabit would not provide the requested information. The representative of Lavabit indicated that Lavabit had the technical capability to decrypt the information but that Lavabit did not want to “defeat [its] own system.”

4. The representative of Lavabit did not comply with the Order, and indicated he first wanted to seek legal advice.

5. The Pen Register and Trap and Trace Act gives this Court the authority to order a provider to assist the government in the execution of a lawful pen register or trap and trace order, including by providing information. Section 3122 of Title 18, United States Code, provides in part: “An order issued under this section-- ... shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.” Section 3124(a) provides, “Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service... shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference... if such

assistance is directed by a court order as provided in section 3123(b)(2) of this title.” Section 3124(b) contains a similar provision governing trap and trace orders.

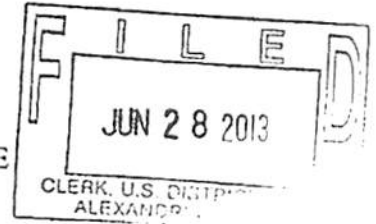
Wherefore, the United States requests an Order directing Lavabit to comply forthwith with the Court’s June 28, 2013 Order.

Respectfully submitted,
NEIL H. MACBRIDE
United States Attorney

By:

A handwritten signature in black ink, appearing to be 'AP', written over a horizontal line.

Andrew Peterson
Assistant United States Attorney



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

Alexandria Division

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING THE) (Under Seal)
INSTALLATION AND USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE) 1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)

ORDER COMPELLING COMPLIANCE FORTHWITH

WHEREAS, on June 28, 2013, at approximately 4:00 p.m., this Court entered an Order pursuant to 18 U.S.C. § 3123 authorizing the installation and use of a pen register and the use of a trap and trace device ("pen/trap device") on all electronic communications being sent from or sent to the electronic mail account ed_snowden@lavabit.com, which is an e-mail account controlled by Lavabit, LLC ("Lavabit"); and

WHEREAS, this Court found that the information obtained by the pen/trap device would be relevant to an ongoing criminal investigation; and

WHEREAS, the Court's Order directed that Lavabit "shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device;" and

WHEREAS, Lavabit informed the Federal Bureau of Investigation that the user of the account had enabled Lavabit's encryption services and thus the pen/trap device would not collect the relevant information; and

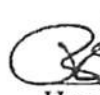
WHEREAS, Lavabit informed the FBI that it had the technological capability to obtain the information but did not want to "defeat [its] own system;"

IT IS HEREBY ORDERED that Lavabit LLC is directed to comply forthwith with the Court's June 28, 2013 Order, and provide the Federal Bureau of Investigation with unencrypted data pursuant to the Order. To the extent any information, facilities, or technical assistance are under the control of Lavabit are needed to provide the FBI with the unencrypted data, Lavabit shall provide such information, facilities, or technical assistance forthwith.

Failure to comply with this Order shall subject Lavabit to any penalty within the power of the Court, including the possibility of criminal contempt of Court. *TCB*

SO ORDERED.

6/28/13

TCB
 Theresa Carroll Buchanan
~~United States Magistrate Judge~~
Hon. Theresa C. Buchanan
United States Magistrate Judge