

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
PURSUANT TO 18 U.S.C. § 2705(b)**

Misc. No. _____

Filed Under Seal

**APPLICATION OF THE UNITED STATES FOR
NONDISCLOSURE ORDER PURSUANT TO 18 U.S.C. § 2705(b)**

The United States of America, moving by and through its undersigned counsel, respectfully submits under seal this *ex parte* application for an Order under 18 U.S.C. § 2705(b) directed at [REDACTED], an electronic communication and/or remote computing service provider located in [REDACTED]. The proposed Order would direct [REDACTED] not to disclose the existence of subpoena number [REDACTED] issued by the United States on behalf of a federal Grand Jury empanelled in the United States District Court for the District of Columbia (the "Subpoena") for a period of one year or until further order of the Court.

JURISDICTION

1. This Court has jurisdiction to issue the requested order because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. Specifically, the Court is a "district court of the United States . . . that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i). As discussed more fully below, acts or omissions in furtherance of the offenses under investigation occurred within Washington, D.C. See 18 U.S.C. § 3237. Finally, the offenses under investigation are the subject of a grand jury investigation in the District of Columbia.

FACTUAL BACKGROUND

2. The United States is investigating possible violations of [REDACTED]
[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] should circumstances change such that court-ordered

nondisclosure under Section 2705(b) becomes no longer needed, the Government will notify the Court and seek appropriate relief.

LEGAL BACKGROUND

4. [REDACTED] provides an "electronic communications service," as defined in 18 U.S.C. § 2510(15), and/or "remote computing service," as defined in 18 U.S.C. § 2711(2). The Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701-2712, governs how [REDACTED] may be compelled to supply communications and other records using a subpoena, court order, or search warrant. Specifically, Section 2703(c)(2) authorizes the Government to obtain certain basic "subscriber information" using a subpoena, Section 2703(d) allows the Government to obtain other "non-content" information using a court order, and Section 2703(a)-(b)(1)(A) allows the Government to obtain contents of communications using a search warrant. *See* 18 U.S.C. § 2703.

5. The SCA does not set forth any obligation for providers to notify subscribers about subpoenas, court orders, or search warrants under Section 2703. However, many have voluntarily

adopted policies of notifying subscribers about such legal requests. Accordingly, when necessary, Section 2705(b) of the SCA enables the Government to obtain a court order to preclude such notification. In relevant part, Section 2705(b) provides as follows:¹

(b) Preclusion of notice to subject of governmental access. — A governmental entity acting under section 2703 . . . may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

18 U.S.C. § 2705(b). The United States District Court for the District of Columbia has made clear that a nondisclosure order under Section 2705(b) must be issued once the Government makes the requisite showing about potential consequences of notification:

The explicit terms of section 2705(b) make clear that if a courts [*sic*] finds that there is reason to believe that notifying the customer or subscriber of the court order or subpoena may lead to one of the deleterious outcomes listed under § 2705(b), the court must enter an order commanding a service provider to delay notice to a customer for a period of time that the court determines is appropriate. Once the government makes the required showing under § 2705(b), the court is required to issue the non-disclosure order.

In re Application for Order of Nondisclosure Pursuant to 18 U.S.C. § 2705(b) for Grand Jury Subpoena #GJ2014031422765, 41 F. Supp. 3d 1, 5 (D.D.C. 2014).

¹ Section 2705(b) contains additional requirements for legal process obtained pursuant to 18 U.S.C. § 2703(b)(1)(B), but the Government does not seek to use the proposed Order for any legal process under that provision.

REQUEST FOR NON-DISCLOSURE

[illegible]

8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] should circumstances change such that court-ordered
non-disclosure under Section 2705(b) becomes no longer needed, the Government will notify the
Court and seek appropriate relief.

9. [REDACTED]

[REDACTED]

[REDACTED] Accordingly, this Court should command [REDACTED] not to notify any other person (except attorneys for [REDACTED] for the purpose of receiving legal advice) of the existence of the Subpoena for a period of one year or until further order of the Court.

10. [REDACTED]

ACCORDINGLY, it is respectfully requested that the Court grant the attached Order directing that [REDACTED] shall not notify any other person (except attorneys for [REDACTED] for the purpose of receiving legal advice) of the existence of the Subpoena for one year (commencing on the date of the proposed Order) or until further order of the Court.

Respectfully submitted,

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By:

