UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF USA FOR 2703(d) ORDER FOR SIX EMAIL ACCOUNTS SERVICED BY GOOGLE FOR INVESTIGATION OF VIOLATION OF 18 U.S.C. §§ [redacted]	**SC No. 20-sc-3361** **Filed Under Seal**

FIFTH MOTION TO MODIFY ORDER

The United States of America, moving by and through its undersigned counsel, respectfully submits under seal this fifth *ex parte* Motion to Modify the nondisclosure provision in the Order in this matter.

On January 5, 2021, this Court issued an Order pursuant to 18 U.S.C. § 2703(d), that included a nondisclosure provision that forbade Google LLC ("Google"), the Provider, from providing notice of the legal process to any person "except attorneys for PROVIDER for the purpose of receiving legal advice." That Order was promptly served on Google. After consulting with Google, the United States moved to modify the nondisclosure order. On March 3, 2021, this Court granted the motion and permitted Google to share the Order with [redacted] the Deputy General Counsel of *The New York Times*, and extended the period for Google's production of records to March 11, 2021. [redacted] requested that: (1) the nondisclosure be further modified so that Mr. McCraw could notify his supervisor [redacted], General Counsel of *The New York Times*, and outside counsel, [redacted] law firm; (2) and that the production of records date for Google be extended 21 days from the execution of the modified nondisclosure order. The United States accommodated that request and moved this Court to modify the Order a second time. The Court granted the motion on March 8, 2021. After further discussion with [redacted] the United States agreed to

ask this Court for leave to amend the nondisclosure provision so they could consult with [redacted] The United States sought such relief from the Court, and this Court modified the Order a third time on March 22, 2021. Those discussions continued and the parties again (for a third time) requested additional time until April 12, 2021, which this Court granted.

Since that time, counsel for the New York Times has briefed more senior members of the Department of Justice and further requested that United States seek an extension of time of five additional weeks for Google to produce the ordered records so that counsel can negotiate further with the United States about the 2703(d) Order.

Without conceding any legal position, the United States is amenable to additional extension of the deadline for Google's production of the requested material until May 17, 2021. A draft proposed Order is attached to this motion.

This matter is already under seal, and the United States further requests that this Motion and proposed Order be filed under seal. The Court has the inherent power to seal court filings when appropriate, including the proposed Order. *United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (citing *Nixon v. Warner Commn'ns, Inc.*, 435 U.S. 589, 598 (1978)). More particularly, the Court may seal the materials to prevent serious jeopardy to an [redacted] investigation when such jeopardy creates a compelling governmental interest in confidentiality. *See Washington Post v. Robinson*, 935 F.2d 282, 287-89 (D.C. Cir. 1991). For the reasons stated previously, the United States has a compelling interest in confidentiality to justify continued sealing of the motion and proposed Order.

CONCLUSION

Based on the foregoing, the United States requests that the Court grant the proposed Order.

Respectfully submitted,

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[redacted]

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