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**

MOTION TO MODIFY ORDER

The United States of America, moving by and through its undersigned counsel, respectfully submits under seal this *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 on the same day. Google did not respond to the filing, and the Order was resubmitted to Google on February 3, 2021. Google has since responded through outside legal counsel[1] and indicated that Google will not comply with the Order because the accounts are "enterprise clients" (i.e., corporate clients who use Google email services). In undersigned's discussions with Google's counsel, Google has confirmed it has records responsive to the Order, and they would withdraw their own objections to the production of material if the United States would obtain permission of the Court to: (1) modify the nondisclosure provision so that Google could share the Order with the Deputy General Counsel for the New York Times, [redacted] and (2) provide that Google not produce

[1] Google is represented by [redacted] in Washington, D.C.

material responsive to the Order for 14 days after such disclosure is made to [redacted]

While the United States takes issue with Google's legal position, in an effort to expedite any litigation of the Order, the United States is amenable to a limited modification of the nondisclosure provision for Google to provide notice solely to [redacted], and for the extension of time. 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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Acting United States Attorney

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