No. 18-56669

In the United States Court of Appeals for the Ninth Circuit

WILLIAM P. BARR, Attorney General,

Appellee,

v.

[REDACTED / UNDER SEAL],

Appellant.

On Appeal from the United States District Court
for the Southern District of California
No. 3:18-cv-02269-BAS-MDD
Hon. Cynthia A. Bashant, U.S. District Judge

BRIEF FOR *AMICI CURIAE* 16 MEDIA ORGANIZATIONS AND ASSOCIATIONS REPRESENTING JOURNALISTS, WRITERS, AND RESEARCHERS IN SUPPORT OF APPELLANT

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, The Associated Press, The Center for Investigative Reporting, The Center for Public Integrity, First Look Media Works, Inc., Hearst Corporation, The McClatchy Company, MPA–The Association of Magazine Media, The National Security Archive, The New York Times Company, Online News Association, The Reporters Committee for Freedom of the Press, Society of Professional Journalists, and The Washington Post. (A more detailed description of *Amici* is contained in Appendix A to this brief.)

Amici file this brief in support of the Appellant in this case—an electronic communications service provider whose identity remains under seal. As representatives and members of the news media, journalists, writers, and researchers (collectively, the "media"), *amici* are committed to the principle of transparency. They have a strong interest in exercising their First Amendment rights to inform the public about the extent of government surveillance of citizens, including the government's issuance of National Security Letters ("NSLs")—often accompanied by gag orders of indefinite, and potentially infinite, duration—to electronic communications service providers that store troves of information about individuals.

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[1] No party's counsel authored any part of this brief. No person other than *amici* or their counsel contributed money intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

Amici agree with Appellant that the nondisclosure orders of unlimited duration that accompany the three NSLs in this case cannot be squared with the First Amendment. In particular, those gag orders cannot satisfy "strict scrutiny," which applies because the orders are classic prior restraints and also content-based restrictions on protected speech. *Amici* write separately to emphasize their unique perspective on three issues.

First, *amici*'s members and communications service provider recipients of NSLs have mutually reinforcing First Amendment interests in disclosure. Like Appellant here, many service providers want to disclose basic information about the NSLs they have received demanding access to their customers' private information. At the same time, the media want to inform the public about these government demands, and the public wants to know about them. Gag orders—and especially indefinite gag orders of the type here—cut off this virtuous cycle of communication, and stymie the interests of *amici*'s members in contributing to debate on a subject of intense public interest: the operations of the government in surveilling its citizens. This strikes a severe blow to core First Amendment speech that is central to a functioning democracy.

Second, the media play an important independent role in contributing to meaningful public oversight of government surveillance. Though the service

provider here had the conviction and wherewithal to launch a lawsuit challenging the gag orders in question, the same will not be true for every recipient of an NSL and accompanying nondisclosure order. Indeed, the limited information that is publicly available about the thousands of secret NSLs that the government now issues each year suggests that only a small fraction are challenged in court. In all other cases, then, it falls to the government to rely on its own self-initiated review process under the FBI's "Termination Procedures." Those Procedures provide for an initial review of the alleged need for the nondisclosure order on the third anniversary of the relevant investigation, and a second review when the investigation ends. As this case illustrates, however, that self-policing mechanism fails to provide the breathing space needed for First Amendment freedoms. The media play an important role in contributing to the public debate about government surveillance. And they can do that job effectively only if this Court and others make clear that NSL nondisclosure orders must be temporally limited and that the government must make a compelling showing ***to a court*** that ongoing secrecy is needed.

Third, as in other areas of the law, the digital revolution calls for special consideration of the burdens on constitutional rights. With the rapid and continuing growth of online platforms and cloud computing, electronic communications service providers—from Facebook to Twitter to cloud computing providers—now store vast troves of individuals' private information, which is increasingly subject to NSLs and

other government demands for disclosure. The concerns presented by unbounded nondisclosure orders are particularly acute when considered against this backdrop.

ARGUMENT

I. The Media and Recipients of National Security Letters Have Mutually Reinforcing First Amendment Interests in Contributing to the Public Debate About Government Surveillance Activities.

Amici support the challenge by Appellant (an electronic communications service provider whose identity remains sealed) to the temporally unlimited gag order prohibiting Appellant from publicly disclosing even basic information about the three NSLs it received eight years ago—a classic prior restraint that has no end in sight. *See Alexander v. United States*, 509 U.S. 544, 550 (1993) ("[t]he term prior restraint is used to describe administrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur.") (internal quotation marks and citation omitted).

Both the media and recipients of NSLs have mutually reinforcing First Amendment interests in disclosure. As this litigation vividly illustrates, many service provider recipients of NSLs want to ***disclose*** basic information about the NSLs they have received requiring the production of information about third parties (often their customers). Appellant is one such recipient, and "is committed to providing meaningful transparency to its users and the public about requests it receives to disclose account information or remove content." Appellant Br. at 1.

Appellant publishes a semi-annual transparency report that discloses information about government and non-government requests for user data, and (when lawful and appropriate) notifies its users when the government is seeking their information. *Id.* Several major service providers do the same. *See, e.g.*, Microsoft Law Enforcement Requests Report, available at https://www.microsoft.com/en-us/corporate-responsibility/lerr/ ("Twice a year we publish the number of legal demands for customer data that we receive from law enforcement agencies around the world"); Facebook Transparency Report: Government Requests for User Data, available at https://transparency.facebook.com/government-data-requests (describing "ongoing effort to share more information about the requests we have received from governments around the world."). At the same time, the media want to ***report*** this information to the public which, in turn, wants to ***receive*** it. *See, e.g.*, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("'It is now well established that the Constitution protects the right to receive information and ideas.'") (citation omitted). Indeed, recent surveys confirm that government surveillance and its impact on personal privacy are topics of pressing public concern. *See, e.g.*, Mary Madden, *Public Perceptions of Privacy and Security in the Post-Snowden Era* at 3 (Pew Research Center, Nov. 2014).

The nondisclosure requirement, however, cuts off public debate by completely silencing NSL recipients who wish to inform the press and the public

about government surveillance. Although electronic surveillance methods used by the FBI and other government agencies have been the subject of intense public interest,[2] internal audits and reports,[3] and congressional review,[4] little is known about the extent of the government's access to private data stored in the cloud.

Individuals and companies who receive NSLs have persistently tried to engage in meaningful and public debate about the subject. For example, Nicholas Merrill, the owner of an Internet service company, spent eleven years battling a nondisclosure order. *See* Priyanka Boghani, Gag Order Gone, *Secrets of a National Security Letter are Revealed*, PBS Frontline (Dec. 2, 2015), available at https://www.pbs.org/wgbh/frontline/article/gag-order-gone-secrets-of-a-national-security-letter-are-revealed. Major communications service providers have also

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[2] *See, e.g.*, Barton Gellman, *The FBI's Secret Scrutiny*, Wash. Post (Nov. 6, 2005), available at http://www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501366.html; Alison Leigh Cowen, *Judges Question Patriot Act in Library and Internet Case*, N.Y. Times (Nov. 3, 2005), available at https://www.nytimes.com/2005/11/03/nyregion/judges-question-patriot-act-in-library-and-internet-case.html; Anonymous, *My National Security Letter Gag Order*, Wash. Post (Mar. 23, 2007), available at http://www.washingtonpost.com/wp-dyn/content/article/2007/03/22/AR2007032201882.html.

[3] *See, e.g.*, U.S. Dep't of Justice, Office of the Inspector Gen., A Review of the Federal Bureau of Investigation's Use of National Security Letters (2007), available at https://oig.justice.gov/special/s0703b/final.pdf; *see also infra* notes 4, 6-7.

[4] *See, e.g.*, Report by the Office of the Inspector Gen. of the Dep't of Justice on the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Jud. (Apr. 14, 2010), available at https://fas.org/irp/congress/2010_hr/exigent.pdf.

sought to inform the public—to the extent possible under the onerous restrictions applied by the government—about the NSLs they have received. *See supra* at 5; *see also* Chris Madsen, *Yahoo Announces Public Disclosure of National Security Letters*, Yahoo! Global Public Policy (Jun. 1, 2016), available at https://yahoopolicy.tumblr.com/post/145258843473/yahoo-announces-public-disclosure-of-national; Kate Conger, *Twitter releases national security letters*, TechCrunch (Jan. 27, 2017), available at https://techcrunch.com/2017/01/27/twitter-releases-national-security-letters.

In turn, the media has responded to the public's intense interest by reporting what little information is available about NSL practice. *See, e.g.*, Maria Bustillos, *What It's Like to get a National-Security Letter*, The New Yorker (Jun. 27, 2013), available at https://www.newyorker.com/tech/annals-of-technology/what-its-like-to-get-a-national-security-letter; R. Jeffrey Smith, *FBI Violations May Number 3,000, Official Says*, Wash. Post (Mar. 21, 2007), available at http://www.washingtonpost.com/wp-dyn/content/article/2007/03/20/AR2007032000921.html. But because of the secrecy shrouding government surveillance programs, the media must rely on recipients of NSLs and other forms of electronic surveillance orders to share information before reporting on this subject. Accordingly, as long as NSL recipients are prevented from disclosing the existence of NSLs, the press is unable

to fulfill its constitutionally recognized role of informing the public about government activities, including the extent of government surveillance.

These reciprocal First Amendment interests—a real-world example of how "'[s]unlight is . . . the best of disinfectants,'" *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (quoting Louis Brandeis, Other People's Money 62 (1933))—are severely threatened by a government-issued mandate that muzzles the service provider and inhibits the media's ability to shine a spotlight on the extent of the government's requests for individual citizens' data. Although the FBI has adopted procedures providing for two discrete periods of review for NSL nondisclosure orders (one on the three-year anniversary of an investigation and another at the close of an investigation), as discussed further below, those protections fall short in significant ways. As a result, a nondisclosure order accompanying an NSL may remain in effect in perpetuity.

Worse still, the shortcomings of this intensely secretive regime—highlighted by this case—strike at the heart of the First Amendment's structural protections of the democratic process. "Customarily, First Amendment guarantees are interposed to protect communication between speaker and listener. . . . But the First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a *structural* role to play in securing and fostering our republican system of self-government." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 586-87 (1980) (Brennan, J., concurring

in the judgment). As Justice Brennan explained in *Richmond Newspapers*, this ensures not only that "'debate on public issues [remains] uninhibited, robust, and wide-open,'" but also that it is "informed" and thus contributes to "th[e] process of communication necessary for a democracy to survive." *Id.* at 587-88 (citing, *inter alia*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)); *see also Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."), *overruled on other grounds*, *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 134 (1967).

Further, non-disclosure orders like those challenged here restrict expression at the core of the First Amendment: discussion about government actions, both by the recipients of NSLs and by the media. "[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Moreover, First Amendment concerns are heightened by the risk that the government may use non-disclosure orders to skew the broader debate about the circumstances in which it accesses the online communications and information of ordinary citizens. Non-disclosure orders that are unlimited in duration also could be improperly wielded to suppress public scrutiny of government abuses—for example, law enforcement

action that targets unpopular protected speech or political rivals.[5] "[I]n the absence of institutional requirements for regular debate—and oversight that is public, as well as private or classified—the danger of government overreach becomes more acute. And this is particularly true when surveillance technology and our reliance on digital information is evolving much faster than our laws." Remarks by President Barack Obama on Review of Signals Intelligence, Jan. 17, 2014.

II. The Media Play an Important Independent Role in Contributing to Meaningful Public Oversight.

In applying First Amendment doctrine to the facts of this case, *amici* respectfully urge the Court to consider the important, independent role that the media can play in shedding light on the use of NSLs. That is especially the case where, as here, neither relying on potential legal challenges from service provider recipients of NSLs nor an infrequent and self-initiated government review provides sufficient "'breathing space'" to safeguard First Amendment freedoms. *Sullivan*, 376 U.S. at 272 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

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[5] The potential misuse of governmental surveillance programs is a topic of global concern. *See, e.g.*, Paul Mozur, Jonah M. Kessel, and Melissa Chan, *Made in China, Exported to the World: The Surveillance State*, N.Y. Times (Apr. 24, 2019) (discussing misuse of extensive surveillance apparatus by Ecuador's former president to further authoritarian measures), available at https://www.nytimes.com/2019/04/24/technology/ecuador-surveillance-cameras-police-government.html?action=click&module=Top%20Stories&pgtype=Homepage.

The media's role is unique because NSLs often evade both public scrutiny and review by the courts. In many cases (although not here), the service provider in question may simply accede to unlimited gag orders prohibiting any disclosures about NSLs and choose to forego judicial review. The affected individuals—for instance, consumers who post reviews on websites, users of social networking sites, or users who entrust vast amounts of their private data to cloud computing providers—may be none the wiser that their information is being turned over to the government and, with a nondisclosure rule of unlimited duration, they may ***never*** learn about this. The broader public, too, is left entirely in the dark.

Moreover, given the costs and risks entailed by challenging a gag order accompanying an NSL (and potentially the underlying NSL itself) in court, a legal regime that relies in large part on the discretion of a service provider to challenge otherwise indefinite gag orders may place users of smaller and less established services—with less financial resources—at a systematic disadvantage.

And the extremely limited information that is publicly available about the use of NSLs suggests that, for whatever reason, many service providers choose the path of least resistance. Although it is impossible to determine with certainty how many NSLs the government has issued and how many are actually challenged in court (given the secrecy that surrounds NSLs), it appears that the vast majority of NSLs go uncontested. The FBI issued 111,144 requests for NSLs during the 2007-2009

period, averaging 37,048 annual requests.[6] The most recent data show that in 2017, the FBI issued 12,762 NSLs containing over 41,579 requests.[7] Historically, the average annual figure is close to 50,000 requests.[8] And a majority of the requests relate to investigations of United States persons.[9]

Yet, despite the proliferation of annual requests, only a handful of challenges by NSL recipients have come to light. *See, e.g.*, *In re Nat'l Sec. Letter*, 863 F.3d 1110 (9th Cir. 2017); *Doe v. Ashcroft*, 334 F. Supp. 2d 471 (S.D.N.Y. 2004), *vacated by Doe I v. Gonzales*, 449 F.3d 415 (2d Cir. 2006); *Doe v. Gonzales*, 386 F. Supp. 2d 66, 68-69 (D. Conn. 2005) (citing case with NSL amendment violations); *Internet Archives et al v. Mukasey et al*, Elec. Frontier Found. (Apr. 5, 2016), available at

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[6] *See* U.S. Dep't of Justice, Office of the Inspector Gen., A Review of the Federal Bureau of Investigation's Use of National Security Letters: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 Through 2009 ("NSL Report"), at 64 (2014), *available at* https://oig.justice.gov/reports/2014/s1408.pdf (discussing NSLs issued by the FBI).

[7] Office of the Dir. of Nat'l Intelligence, Statistical Transparency Report Regarding the Use of National Security Authorities for Calendar Year 2017 at 38 ("2017 ODNI Report"), (April 2018), available at https://www.dni.gov/files/documents/icotr/2018-ASTR----CY2017----FINAL-for-Release-5.4.18.pdf.

[8] *See* NSL Report, *supra* note 6, at 65.

[9] *See id.* at 62 (providing graphic of NSL requests relating to investigation of U.S. citizens); *compare* 2017 ODNI Report, *supra* note 7, at 38 (reporting 12,762 NSLs) *with* Annual Report Submitted to Congress Regarding FISA, U.S. Dep't of Justice, Office of Legislative Affairs, at 3 (April 30, 2018) (reporting FBI made 9,006 NSL requests in 2017 for information concerning United States persons).

https://www.eff.org/cases/archive-v-mukasey (reporting on Internet Archive's complaint challenging NSL request, which the FBI later withdrew). Thus, the available public records suggest that only small fraction of the thousands of NSLs issued by the government each year are ultimately subject to judicial review. The possibility that any given NSL will ***never even come to light*** is therefore extremely high. As a result, the media can only perform their role of informing the public on the extent of government issuance of NSLs if the courts' application of the governing rules places meaningful limits on the scope and duration of gag orders and holds the government to its burden of showing an ongoing and compelling need for nondisclosure.

The First Amendment requires no less. This Court has previously recognized that the nondisclosure obligations that routinely accompany NSLs are content-based restrictions that warrant strict scrutiny. *In re Nat'l Sec. Letter*, 863 F.3d at 1123. To survive such scrutiny, the government's speech-suppressing measures must be narrowly tailored to the government's asserted interest, and the burden rests squarely on the government to make that showing. *Id.* at 1121. "A restriction is not narrowly tailored 'if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.'" *Id.* at 1124 (quoting *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 874 (1997)). And here, a less restrictive means—*i.e.*, ***court-ordered*** review of the nondisclosure obligations of NSLs at more

frequent intervals, with the burden on the government to demonstrate on ongoing compelling need for secrecy—is readily available and can preserve the government's interests. Indeed, other courts have ordered this relief. *See, e.g.*, *Sessions v. Twitter, Inc.*, No. 5:17-cv-353-DAE, ECF No. 19 (W.D. Tex. June 21, 2017) (imposing a nondisclosure order requiring triennial judicial review); *In re Nat'l Sec. Letters*, No. 16-518 (JEB), 2016 WL 7017215 (D.D.C. July 25, 2016) (same). The court below should have done the same here.[10]

The District Court instead pointed to the FBI's Termination Procedures as a potential backstop to protect First Amendment interests. But those Procedures provide cold comfort, because the ***government-initiated*** review process they entail is riddled with loopholes.[11] First, the Procedures themselves are not codified in a

[10] Although this Court held that the statutory regime authorizing NSLs is not unconstitutional on its face, the Court recognized the importance of meaningful judicial review of particular nondisclosure orders: "[A]s part of the judicial review process, a court may require the government to justify the continued necessity of nondisclosure on a periodic, ongoing basis, or may terminate the nondisclosure requirement entirely if the government cannot certify that one of the four enumerated harms may occur." *In re Nat'l Sec. Letter*, 863 F.3d at 1127 (citations omitted). To the extent that the court below believed that this Court's rejection of a facial challenge to the underlying statute precludes meaningful judicial oversight of nondisclosure orders on a case-by-case basis, it was mistaken.

[11] Under the Termination Procedures, review is initiated solely by the government. *See* Termination Procedures for National Security Letter Nondisclosure Requirement, at 2, available at https://www.fbi.gov/file-repository/nsl-ndp-procedures.pdf/view ("The FBI also will review all NSL nondisclosure determinations on the three-year anniversary of the initiation of the

statute, and the government has not clearly conceded that they are legally binding requirements. *See* Appellant Br. at 25. Second, it is not even clear whether the procedures apply to NSLs—like the three here—that were issued before the FBI adopted the Procedures in November 2015. Third, even if the procedures do apply here, for ongoing investigations that have not yet reached their three-year anniversary, there is not even a suggestion that the government should undertake a refreshed assessment of the presumed need for secrecy. And once the three-year anniversary has passed, investigations may remain open for many years (or even decades). Thus, an NSL gag order may remain in place long after there is no genuine need for continued secrecy. *See In re Nat'l Sec. Letter*, 863 F.3d at 1126 ("[I]f an investigation extends for many years, the Termination Procedures do not provide for *any* interim review between the third-year anniversary and the date the investigation closes") (emphasis added). For all these reasons, this Court should conclude that the Termination Procedures do not save the NSL gag orders here.

III. The Continuing Growth of Online Platforms and Cloud Computing Will Render This Issue Increasingly Salient in the Digital Age.

Finally, the First Amendment concerns discussed above are particularly acute in today's digital marketplace. With the rapid and continuing growth of online platforms and cloud computing, electronic communications service providers—

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full investigation and terminate nondisclosure at that time, unless the FBI determines that one of the statutory standards for nondisclosure is satisfied.").

from Facebook to Twitter to cloud computing providers—store vast troves of information that are increasingly subject to government demands for disclosure, including via NSLs. *See infra* at 17-18.

As the Supreme Court has recognized, the digital age raises unique concerns that require ever more vigilance toward constitutional rights. *Riley v. California*, 573 U.S. 373, 393-97 (2014). Although *Riley* addressed a separate constitutional right (the right to be free from unreasonable searches and seizures), the Court's basic point—that constitutional concerns may take on special salience and demand a more solicitous approach when addressing the challenges presented by new technology—rings true here as well. Noting the unique concerns presented when traditional doctrine allowing law enforcement to conduct searches "incident to" lawful arrest is applied to searches of cell phones (and "smartphones" in particular), the Court explained that "many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone" and contain "immense storage capacity," which has "several interrelated consequences for privacy." *Id.* at 393-94. Indeed, "[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions," while "the same cannot be said of a photograph or two of loved ones tucked into a wallet." *Id.* This technology therefore "implicate[s] privacy concerns far beyond those implicated" by more conventional searches. *Id.*

As the Court in *Riley* recognized, modern cell phones are just the tip of the iceberg, because, "with increasing frequency" Americans are "taking advantage of cloud computing," which is "the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself." *Id* at 397. These services allow for the remote storage of significantly more user data—by a staggeringly large multiplier—than a single cell phone. As of May 2017, 61% of adults aged 18-29 participating online used cloud computing services, with an additional 42% of users aged 30-59 doing so as well.[12] The use of social media, which has allowed digital media companies to collect virtual treasure troves of personal data, has also skyrocketed—with fully 70% of Americans now using social media to communicate, access the news, and share personal information.[13]

The Supreme Court recently confirmed the primacy of these digital spaces for expressive activity, observing that "[w]hile in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, and social media in particular." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. Am. Civil Liberties Union*,

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[12] *See* https://www.statista.com/statistics/710972/us-cloud-computing-demographic-age-group.

[13] *See* Pew Research Center, Social Media Fact Sheet, at https://www.pewinternet.org/fact-sheet/social-media.

521 U.S. 844, 868 (1997)). Yet all of these services are prime targets of NSLs and gag orders that bar their users and the broader public from ever learning about them. And they are now issued at a breathtaking pace, seeking massive volumes of information. *See supra* at 11-12. Facebook, for instance, reports that it may have received up to 499 such requests during a single six-month period (January–June 2018).[14]

Just as Fourth Amendment doctrine developed for an analog world cannot be transplanted wholesale into the digital era, the First Amendment analysis here should take account of the current pervasive use of NSLs and the unprecedented volumes of information those requests can covertly sweep into the hands of government. In this context, the First Amendment demands that meaningful constrains be placed on nondisclosure orders that attach to NSLs.

CONCLUSION

For the foregoing reasons, the Court should reverse the District Court's judgment, and remand the case to the District Court so that new and more temporally limited nondisclosure obligations, if any are still needed, can be narrowly tailored to the interest asserted by the government through the NSLs.

[14] *See* https://transparency.facebook.com/government-data-requests/country/US.

Dated: April 29, 2019

Respectfully submitted,

/s/ Peter Karanjia

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APPENDIX A

SUPPLEMENTAL INFORMATION ABOUT *AMICI*

American Society of News Editors ("ASNE") is an organization—with some 500 members—that includes directing editors of daily newspapers throughout the Americas. In 2009, ASNE broadened its membership to include editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership, and the credibility of newspapers.

The Associated Press Media Editors ("APME") is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services, and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Center for Investigative Reporting ("CIR"), founded in 1977, is the nation's first nonprofit investigative journalism organization. CIR produces investigative journalism for its website, its national public radio show and podcast, and various documentary projects.

The Center for Public Integrity is a non-profit, non-partisan, international organization that produces investigative journalism in the public interest. To pursue its mission, the Center generates high-quality, accessible investigative reports, databases, and contextual analysis on issues of public importance. The Center's coverage areas include politics—at both the national and state levels, business, environment, workers' rights, immigration, and national security.

First Look Media Works, Inc. ("First Look") is a non-profit digital media venture that produces *The Intercept*, a digital magazine focused on national-security reporting.

Hearst Corporation is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 24 daily and 60 weekly newspapers, including the *San Francisco Chronicle*, *Houston Chronicle*, and *Albany Times Union*; hundreds of magazines around the world, including *Cosmopolitan*, *Good Housekeeping*, *ELLE*, *Harper's BAZAAR* and *O, The Oprah Magazine*; 34 television stations such as KCRA-TV in Sacramento, Calif. and KSBW-TV in Monterey/Salinas, California, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime, and ESPN; and significant holdings in other businesses.

The McClatchy Company is a publisher of iconic brands such as *The Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, *The Charlotte Observer*, *The (Raleigh) News and Observer*, and *The (Fort Worth) Star-Telegram*. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

MPA – The Association of Magazine Media ("MPA") is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that

produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The National Security Archive ("the Archive"), founded in 1985, is an independent nongovernmental research institute and library affiliated with George Washington University. The Archive collects and serves as a publicly available library of government records on a wide range of topics pertaining to the national-security, intelligence, and economic policies of the United States. The Archive won the 1999 George Polk Award for "piercing the self-serving veils of government secrecy, guiding journalists in the search for the truth and informing us all."

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence, and freedom of expression and access.

The Reporters Committee for Freedom of the Press (the "Reporters Committee") is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to identify their confidential sources. Today, its attorneys provide *pro bono* legal representation and resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and promoting high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects First Amendment guarantees of freedom of speech and press.

The Washington Post (formally, WP Company LLC) is a news organization based in Washington, D.C. It publishes *The Washington Post* daily newspaper, the website www.washingtonpost.com, and a number of digital and mobile news products.

CERTIFICATE OF COMPLIANCE

This amicus brief complies with the lengths permitted by Federal Rule of Appellate Procedure 29(a)(5) because it contains 5,190 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). The brief complies with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared using Microsoft Office Word 2016 and has a typeface of 14-point Times New Roman.

Dated: April 29, 2019

/s/ Peter Karanjia
Peter Karanjia

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2019, I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 29, 2019

/s/ Peter Karanjia
Peter Karanjia