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by cm/ecf

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Smith v. Obama*, 9th Cir. No. 14-35555

Dear Ms. Dwyer:

On June 29, 2015, the Foreign Intelligence Surveillance Court granted the government's application to resume the Section 215 bulk telephony-metadata program pursuant to the USA FREEDOM Act during the six-month transition period provided for in that statute. *See In re Application of the FBI for an Order Requiring the Production of Tangible Things*, Dkt. Nos. BR 15-75, Misc. 15-01 (F.I.S.C. June 29, 2015),

http://www.fisc.uscourts.gov/sites/default/files/BR%2015-75%20Misc%2015-01%20Opinion%20and%20Order_0.pdf. This opinion was posted to the FISC's website on July 2, 2015.

The FISC's opinion supports the arguments the government presented in its supplemental brief on the effect of the USA FREEDOM Act on this case. The FISC held, as we argued in our supplemental brief, that Congress in the USA FREEDOM Act explicitly authorized the government to continue the Section 215 bulk telephony-metadata program during the 180-day transition period as part of an orderly transition away from bulk collection of telephony metadata under that program. *See id.* at 10-12. The FISC rejected the Second Circuit's conclusion, *see ACLU v. Clapper*, 785 F.3d 787 (2d Cir. 2015), that Section 215 does not authorize the bulk telephony-metadata program, noting that the Second Circuit reached its decision before enactment of the USA FREEDOM Act, in which "Congress—with full knowledge and extensive public debate of this program and its legal

underpinnings—permitted the continuation of the program until November 29, 2015.” *Id.* at 18.

For the reasons articulated in our supplemental brief, the Court should respect Congress’s decision to continue the Section 215 program for this limited period, and hold that plaintiff is not entitled to any of the (solely equitable) relief she requests.

Sincerely,

/s/ Henry C. Whitaker

Henry C. Whitaker
Attorney

cc: counsel of record (by cm/ecf)