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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TWITTER, INC.,
Plaintiff,
v.
LORETTA E. LYNCH, et al.,
Defendants.

Case No. 14-cv-04480-YGR

**ORDER DENYING MOTION TO DISMISS AS
MOOT AND, ON THE COURT’S OWN
MOTION, ORDERING FILING OF AMENDED
COMPLAINT IN LIGHT OF RECENT
LEGISLATION**

On June 3, 2015, Defendants Loretta Lynch, *et al.*, (“the Government”) filed a “Notice Regarding Enactment of USA FREEDOM Act of 2015.” (Dkt. No. 67.) On June 9, 2015, Plaintiff Twitter, Inc. (“Twitter”) filed its own Notice regarding the new legislation. (Dkt. No. 68.) The Court thereafter ordered the parties to file supplemental briefing on the effect of the legislation on both the Government’s pending partial motion to dismiss and on the complaint generally, and the parties did so. (*See* Dkt. Nos. 69, 74, 75, 76, 77.)

On August 28, 2015, the Government filed a Notice of Recent Authority (Dkt. No. 78), attaching a decision of the Ninth Circuit which vacated judgments in several cases pending before it (*In re: National Security Letter* cases, Ninth Circuit Court of Appeal Nos. 13-15957, 13-16731, 13-16732), and remanded to the district court for further consideration “in light of the significant changes to” 18 U.S.C. sections 2709 and 3511 effected by the Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015, Pub. L. No. 114-23, 129 Stat. 268 (2015) (“the USA FREEDOM Act” or “the USAFA”).

The Court again solicited additional supplemental briefing specifically addressed to

1 whether the USAFA changed the FISA and NSL-related provisions challenged by Twitter in its
2 complaint (*i.e.*, 18 U.S.C. §§ 2709 and 3511) such that the entire action would be moot. The
3 parties filed those additional supplemental briefing on September 29, 2015.

4 The Court heard the parties’ oral arguments on October 13, 2015.

5 The Court, having carefully considered the parties briefing, their oral arguments, the
6 relevant provisions of the new legislation, and the pleadings in this matter, and for the reasons set
7 forth herein, **ORDERS** that: (1) the Government’s pending motion to dismiss is **DENIED AS MOOT**;
8 and (2) on the Court’s own motion, Twitter shall file an amended complaint no later than
9 **November 13, 2015**, in light of the mootness of its constitutional challenges to 18 U.S.C. sections
10 2709 and 3511 based upon the amendments to those sections worked by the USAFA, or the instant
11 action will be dismissed without further notice as moot.

12 A federal court may only decide such matters as arise in the context of a genuine case or
13 controversy under Article III of the United States Constitution. Here, Twitter brought: (1) First
14 Amendment challenges to 18 U.S.C. sections 2709(c) and 3511; and (2) a challenge under the
15 Administrative Procedure Act (“APA”) to an action by the Deputy Attorney General (“the DAG
16 Letter”) that Twitter contends was a “final agency action” to regulate the ways in which
17 communications providers could report data on government requests for its customers’
18 information. Subsequently, Congress enacted the USAFA, which amended sections 2709(c) and
19 3511, and established new statutory mechanisms for public disclosure of requests received by
20 communications providers. Those new statutory mechanisms included disclosure of aggregate
21 data in bands similar to, but narrower and more specific than, those set forth in the DAG Letter.
22 The Court concludes that the changes wrought by the USAFA abrogate all challenges raised in
23 Twitter’s complaint, and preclude the Court from providing any effective relief thereon. In the
24 absence of amendments to the complaint to address these changes, dismissal is appropriate.

25 **I. BACKGROUND**

26 Twitter’s action herein alleges claims for declaratory relief from prohibitions on its speech
27 in violation of the First Amendment. The Complaint alleges, among other things, that Twitter
28 seeks to publish a “Transparency Report” with certain data about legal process it has received

1 from the Government, including requests pursuant to the Foreign Intelligence Surveillance Act
2 (“FISA”) and National Security Letters (“NSLs”).

3 **A. Underlying Facts**

4 On January 27, 2014, in connection with pending complaints filed with the Foreign
5 Intelligence Surveillance Court (“FISC”) by Facebook, Google, Yahoo, Microsoft, and LinkedIn,
6 the Government filed a Notice attaching and referencing the DAG Letter. The Notice to the FISC
7 stated:

8 The Director of National Intelligence has declassified the aggregate data
9 consistent with the terms of the attached [DAG Letter], in the exercise of the
10 Director of National Intelligence’s discretion pursuant to Executive Order 13526,
11 § 3.1(c). The Government will therefore treat such disclosures as no longer
12 prohibited under any legal provision that would otherwise prohibit the disclosure
13 of classified data, including data relating to FISA surveillance. It is the
14 Government's position that the terms outlined in the Deputy Attorney General's
15 letter define the limits of permissible reporting for the parties and other similarly
16 situated companies.

17 *See* Complaint, Exh. 2 (“FISC Notice”); *see also* Complaint, Exh. 1 (the DAG Letter). The DAG
18 Letter “memorialize[d] the new and additional ways in which the government will permit
19 [providers] to report data concerning requests for customer information.” (*Id.*) The letter stated:

20 In the summer of 2013, the government agreed that providers could report in
21 aggregate the total number of all requests received for customer data, including all
22 criminal process, NSLs, and FISA orders, and the total number of accounts
23 targeted by those requests in bands of 1000. In the alternative, the provider could
24 separately report precise numbers of criminal process received and number of
25 accounts affected thereby, as well as the number of NSLs received and the
26 number of accounts affected thereby in bands of 1000. Under this latter option,
27 however, a provider could not include in its reporting any data about FISA
28 process received. [¶] The government is now providing two alternative ways in
which companies may inform their customers about requests for data. Consistent
with the President's direction in his speech on January 17, 2014, these new
reporting methods enable communications providers to make public more
information than ever before about the orders that they have received to provide
data to the government.

(Complaint, Exh. 1.) The DAG Letter went on to set forth, in detail, two different reporting
options that a provider could use in disclosing information about the numbers of requests for
information they have received, along with limitations on the timing of publication of such

1 numbers. (*Id.*)

2 That same date the Government issued a “Joint Statement by Director of National
3 Intelligence James Clapper and Attorney General Eric Holder on New Reporting Methods for
4 National Security Orders.”¹ The Joint Statement said,

5 As indicated in the Justice Department’s filing with the Foreign Intelligence
6 Surveillance Court, the administration is acting to allow more detailed disclosures
7 about the number of national security orders and requests issued to
8 communications providers, the number of customer accounts targeted under those
9 orders and requests, and the underlying legal authorities. Through these new
10 reporting methods, communications providers will be permitted to disclose more
11 information than ever before to their customers. [¶] This action was directed by
12 the President earlier this month in his speech on intelligence reforms. While this
13 aggregate data was properly classified until today, the Office of the Director of
14 National Intelligence, in consultation with other departments and agencies, has
15 determined that the public interest in disclosing this information now outweighs
16 the national security concerns that required its classification.... [¶] The
17 declassification reflects the Executive Branch’s continuing commitment to
18 making information about the government’s intelligence activities publicly
19 available where appropriate and is consistent with ensuring the protection of the
20 national security of the United States.

21 Executive Order 13526 section 3.1(d) permits an agency of the executive branch to declassify
22 previously classified information.

23 On April 1, 2014, Twitter submitted to the government a draft transparency report
24 containing information and discussion about the aggregate numbers of NSLs and FISA orders it
25 received in the second half of 2013. Twitter requested “a determination as to exactly which, if
26 any, parts of its Transparency Report are classified or, in the [government’s] view, may not
27 lawfully be published online.” (Complaint, Exh. 3.) Five months later, on September 9, 2014, the
28 Government, in a letter from James A. Baker, General Counsel of the Federal Bureau of
Investigation, notified Twitter that “information contained in the report is classified and cannot be

1 This statement, dated January 27, 2014, was made on the Internet at a webpage entitled
“IC On The Record.” (*available at [http://icontherecord.tumblr.com/post/74761658869/joint-
statement-by-director-of-national](http://icontherecord.tumblr.com/post/74761658869/joint-statement-by-director-of-national)*). The webpage states in its sidebar descriptor “IC ON THE
RECORD: Direct access to factual information related to the lawful foreign surveillance activities
of the U.S. Intelligence Community. Created at the direction of the President of the United States
and maintained by the Office of the Director of National Intelligence.” The webpage also includes
a clickable button labeled “Follow @IContheRecord” linking to the Twitter website.

1 publicly released” because it does not comply with the government’s approved framework for
2 reporting data about FISA orders and NSLs. (Complaint, Exh. 5.) The Government’s September
3 9, 2014 response did not identify what specific language in the draft transparency report could or
4 could not be disclosed. (*Id.*)²

5 **B. Procedural History of this Case**

6 Twitter filed its Complaint herein on October 7, 2014. On January 9, 2015, defendants
7 moved to dismiss portions of the complaint filed October 7, 2014, pursuant to Federal Rules of
8 Civil Procedure 12(b)(1) and 12(b)(6), and for prudential reasons. After full briefing and
9 extensions of time by the parties, the Court heard oral argument on the motion May 5, 2015, and
10 took the matter under submission.

11 On June 3, 2015, the Government filed its notice regarding the enactment of the USAFA
12 (Dkt. No. 67), which was quickly followed by Twitter’s notice of the same legislation, albeit
13 stating a different position as to its effect.

14 As stated above, at the direction of the Court, the parties filed supplemental briefing on the
15 effect of the new legislation on the pending motion and the complaint, as well as responses to
16 those briefs.

17 **C. Enactment of the USAFA**

18 The USAFA made a number of additions and changes to the FISA. As pertinent here:

- 19 1. The USAFA, section 603(a), added new provisions permitting providers who have
20 received national security legal process, such as an NSL or FISA order, to release publicly:
- 21 a. semiannual report that aggregates in separate bands of 1000, starting with 0-999:
22 the number of NSLs the person was required to comply with; the number of customer
23 selectors (*e.g.*, user accounts) targeted by NSLs; the combined number of FISA orders or
24 directives received requiring the person to provide communication contents; the number of
25 customer selectors targeted by orders or directives for contents; the number of FISA orders
26 received for non-content information; and the number of customer selectors targeted under

27 ² Six weeks after Twitter filed this lawsuit, on November 17, 2014, the Government
28 prepared a redacted version of the draft transparency report that it agreed could be released
publicly by Twitter. (Dkt. No. 21.)

1 FISA orders for certain types of non-content information, and decreased from 24 to 18
2 months the requirement to wait on reporting applicable to new platforms, products, or
3 services. 50 U.S.C. § 1874(a)(1).

4 b. a report consistent with the above but reporting in bands of 500, starting with 0-
5 499, so long as non-content FISA data is not broken out by authority, and with a decrease
6 in the delay period with respect to new platforms, products, or services from 24 to 18
7 months. 50 U.S.C. § 1874(a)(2).

8 c. a report consistent with the above but reporting in bands of 250, starting with 0-
9 249, the total number of all national security legal process received (including NSLs and
10 FISA orders and directives) and the total number of customer selectors targeted by such
11 national security legal process, and the delayed reporting provisions do not apply. 50
12 U.S.C. § 1874(a)(3).

13 d. an annual report of the total number of all national security process received and
14 the number of customer selectors targeted under all such legal process received in bands of
15 100, starting with 0-99. 50 U.S.C. § 1874(a)(4).

16 2. The USAFA amended the terms of 18 U.S.C. section 3511(b) to provide an NSL
17 recipient with two alternative means to obtain judicial review of a nondisclosure requirement: (a)
18 by filing a petition for judicial review; or (b) by notifying the Government that it desires a court
19 review, shifting the burden to the Government to justify a nondisclosure requirement. 18 U.S.C. §
20 3511(b)(1)(A). If the recipient requests the Government seek a court review, the Government
21 must apply for a nondisclosure order within thirty days thereafter. *Id.* § 3511(b)(1)(B). The
22 Government must present a certification including the Government’s “statement of specific facts”
23 explaining why the absence of a prohibition on disclosure may result in enumerated harms. *Id.* §
24 3511(b)(2). The district court is required to “rule expeditiously,” and, to “issue a nondisclosure
25 order that includes conditions appropriate to the circumstances,” if it determines that the
26 requirements for nondisclosure are met. *Id.* § 3511(b)(1)(C).

27 3. The USAFA repealed the provision (formerly in § 3511(b)(2)-(3)) that gave
28 conclusive effect to a good-faith certification by specified officials of certain harms, as well as the
provision (formerly in § 3511(b)(3)) that required an NSL recipient in certain circumstances to

1 wait one year after an unsuccessful challenge before again seeking judicial relief.

2 4. The USAFA, section 502, amends 18 U.S.C. § 2709(b) and (c), and adds new
3 subsection (d). As revised by the Act, § 2709(c) now expressly requires the Government to
4 provide the NSL recipient with notice of the right to judicial review in order for the prohibition on
5 disclosure to apply. 18 U.S.C. § 2709(c)(1)(A). New section 2709(d) adds that an NSL or a
6 nondisclosure requirement accompanying an NSL shall be subject to judicial review under § 3511
7 and that an NSL shall include notice of the availability of judicial review. 18 U.S.C. § 2709(d)(1),
8 (2).

9 **II. APPLICABLE AUTHORITY ON JUSTICIABILITY AND MOOTNESS**

10 The Constitution limits the federal judicial power to designated “cases” and
11 “controversies.” U.S. Const., Art. III, § 2. Federal courts do not have power to decide questions
12 of law except as they arise in the context of a genuine “case” or “controversy” within the meaning
13 of Article III. *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972). “(A)n
14 actual controversy must be extant at all stages of review, not merely at the time the complaint is
15 filed.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotations
16 omitted); *see also Alvarez v. Smith*, 558 U.S. 87, 92-94 (2009); *Diffenderfer v. Cent. Baptist*
17 *Church of Miami, Fla., Inc.*, 404 U.S. 412, 414 (1972) (per curiam) (“We must review the
18 judgment of the District Court in light of Florida law as it now stands, not as it stood when the
19 judgment below was entered.”). Unless a party can obtain effective relief by its complaint, any
20 opinion as to the legality of a challenged action would be merely advisory. *City of Erie v. Pap’s*
21 *A.M.*, 529 U.S. 277, 287 (2000).

22 The voluntary cessation of challenged conduct does not ordinarily render a case moot,
23 since the conduct could be resumed. *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289
24 (1982). However, a statutory change is usually enough to render a case moot, even if the
25 legislature has the power to modify the statute again after the lawsuit is dismissed. *See*
26 *Maldonado v. Morales*, 556 F.3d 1037, 1042 (9th Cir. 2009); *see also Diffenderfer*, 404 U.S. at
27 414-15 (where the only relief sought was to declare a statute unconstitutional, repeal of statute
28 mooted the action); *Matter of Bunker Ltd. P’ship*, 820 F.2d 308, 313 (9th Cir. 1987) (“Offering an

1 advisory opinion construing a statute that is not before us in order to grasp at a finding of a live
 2 controversy embodies obvious and fundamental inconsistencies, and is contrary to the case or
 3 controversy requirement.”). “[T]he Supreme Court and [the Ninth Circuit] have repeatedly held
 4 that a case is moot when the challenged statute is repealed, expires, or is amended to remove the
 5 challenged language.” *Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166 (9th Cir.
 6 2011) (“Don’t Ask, Don’t Tell” statute repealed during pendency of appeal of Constitutional
 7 challenge); *see also Princeton Univ. v. Schmidt*, 455 U.S. 100, 101, 103 (1982) (per curiam) (First
 8 Amendment challenge to prior set of university regulations governing on-campus speech by
 9 members of the public was mooted when the university substantially amended those regulations to
 10 create a more permissive scheme). Similarly, when subsequent legislation or rulemaking
 11 supersedes challenged regulations or rules, the challenge is moot. *NRDC v. U.S. Nuclear*
 12 *Regulatory Comm’n*, 680 F.2d 810, 813-14 & n.8 (D.C. Cir. 1982) (challenge to interim rule for
 13 failure to abide by notice and comment requirements mooted by issuance of final rule with notice
 14 and comment); *Bullfrog Films, Inc. v. Wick*, 959 F.2d 778, 780 (9th Cir. 1992) (appeal moot where
 15 interim regulations found unconstitutional by the district court have been supplanted by the new
 16 legislation).

17 In *Maldonado*, a district court issued an injunction to remedy the constitutional violation:
 18 impermissibly favoring commercial over non-commercial speech by allowing exceptions for
 19 certain commercial advertising but not non-commercial messages. *Maldonado*, 556 F.3d at 1042.
 20 The California Legislature thereafter enacted a statute that specifically excepted non-commercial
 21 speech from such regulation. Finding that the statute addressed exactly the constitutional problem
 22 raised in the complaint, the Ninth Circuit dismissed the appeal as moot. *Id.*

23 **III. DISCUSSION**

24 Twitter’s Complaint alleges a violation of the APA with respect to the DAG letter, as well
 25 as facial and as-applied challenges to sections 2709(c) and 3511. The Government argued for
 26 partial dismissal of the claims on several grounds: (1) that Twitter had no standing to seek judicial
 27 review of the DAG letter because it was not “final agency action” for purposes of the APA; (2)
 28 that the Court should decline jurisdiction and defer decision on FISA-based claims to the FISC

1 based upon comity and prudential considerations; (3) that the Court should dismiss the challenge
2 to section 3511 based upon the reasoning expressed in *John Doe, Inc. v. Mukasey*, 549 F.3d 861
3 (2d Cir. 2008), rather than following the analysis of the district court in the *In re Nat'l Sec. Letter*,
4 930 F. Supp. 2d 1064, 1073 (N.D. Cal. 2013) (“*In re NSL*”).

5 Each of the argued grounds for dismissal is eliminated by the provisions of the new
6 USAFA. First, the Government concedes what seems apparent from the legislation: whatever
7 effect the DAG Letter had, it is now superseded by section 603 of the USAFA. Section 603
8 permits disclosure of aggregate data in bands, some of which track those set forth in the DAG
9 Letter, and some that differ. Twitter argues that the USAFA does not supersede the DAG Letter
10 because it offers more options for reporting by communications providers than the DAG Letter
11 did. Twitter further argues that the Government cannot simply withdraw the DAG Letter because
12 a legislative rule (that Twitter complains was not adopted in accord with the APA to begin with)
13 cannot be *withdrawn* except through a notice-and-comment process consistent with the
14 requirements of the APA, 5 U.S.C. section 551(5). Both of Twitter’s arguments are untenable.
15 Whether the DAG Letter is a non-binding statement of agency guidance (as the Government
16 would have it) or an improperly adopted regulation (as Twitter would have it), *Congress* surely
17 can enact legislation that supplants the disclosure options set forth in the DAG Letter with a set of
18 more detailed and unqualified disclosure options. *See Mohasco Corp. v. Silver*, 447 U.S. 807, 825
19 (1980) (agency’s “‘interpretation’ of the statute cannot supersede the language chosen by
20 Congress”); *Pac. Gas & Elec. Co. v. United States*, 664 F.2d 1133, 1136 (9th Cir. 1981) (“a
21 regulation which operates to create a rule out of harmony with the statute, is a mere nullity”).
22 Twitter offers no authority to the contrary. Moreover, the notion that an APA process would have
23 to be followed in order to withdraw a rule that Twitter claims was not properly adopted through
24 the APA in the first place defies logic and is similarly unsupported by any authority cited by
25 Twitter.

26 Because the USAFA results in the DAG Letter having no legal effect, the issue of whether
27 it was a “final agency action” or not, raised in the Government’s motion, is now purely an
28 academic question. The Court’s jurisdiction does not include the dispensing of advisory opinions

1 on agency actions that have been rendered legal nullities by subsequent legislation. *See*
2 *Diffenderfer*, 404 U.S. at 414-15; *Maldonado*, 556 F.3d at 1042. To the extent that Twitter seeks
3 to challenge the constitutionality of any of the USAFA limitations, its challenge would need to be
4 addressed to the new legislation.³

5 Second, and similarly, the challenge to section 3511, and the Government’s argument that
6 it should be dismissed as a matter of law, is no longer properly before the Court given the
7 amendments to the FISA provisions at issue.⁴ Twitter argues that the USAFA did not provide a
8 standard of review that is meaningfully different the one challenged in its complaint, and that the
9 USAFA still gives an unconstitutional level of deference to government nondisclosure decisions.
10 However, Twitter’s argument ignores the significant changes and safeguards to the judicial review
11 process that were added to sections 3511(b)(1) and (2) by the USAFA. The House Report in
12 connection with the legislation says that these sections were enacted to “correct[] the
13 constitutional defects in the issuance of NSL nondisclosure orders found by the Second Circuit
14 Court of Appeals in *Doe v. Mukasey*, 549 F.3d 861 (2d. Cir. 2008), and adopt[] the concepts
15 suggested by that court for a constitutionally sound process.” H.R. Rep. No. 114-109, at 24. The
16 defects identified in *Mukasey* are the same defects identified by the district court in the *In re NSL*

17
18 ³ Twitter seems to argue that the speech permitted by the DAG Letter is somehow *greater*
19 than what would be permitted under the USAFA and that “the speech permitted under the DAG
20 Letter would need to be *reclassified* or lawfully brought under some new nondisclosure provision
21 for it now to be considered prohibited speech.” (Twitter Reply Supp. Brief, Dkt. 76, at 2:7-9.) The
22 Court reads the disclosures allowed under the USAFA to be more permissive than the DAG Letter
23 allowed, such that anything permitted under the DAG Letter would also be permitted under the
24 USAFA. Moreover, the USAFA provides: “Nothing in this section prohibits the Government and
25 any person from jointly agreeing to the publication of information referred to in this subsection in
26 a time, form, or manner other than as described in this section.”). USAFA § 603(c), *codified at* 50
27 U.S.C. § 1874(c).

28 The Court further notes that, according to the Government’s brief, the DNI declassified
aggregate data reported consistent with the USAFA, pursuant to Pursuant to Executive Order
13,526. *See* 75 Fed. Reg. 1013 (Dec. 29, 2009).

⁴ In addition, the Government’s argument that the Court should delay decision on the
motion with respect to section 3511 until the Ninth Circuit has ruled on the *In re NSL* appeal is
mooted for the separate reason that the Ninth Circuit has vacated the judgment in that case and
remanded it for further consideration in light of the passage of the USAFA. (*See* Dkt. No. 78.)

1 case on which Twitter relies. *In re NSL*, 930 F. Supp. 2d at 1073. Indeed, Twitter argued that the
2 Second Circuit’s decision in *Mukasey* “correctly identified the constitutional problems posed by
3 Section 2709(c)’s broad language,” even if it reached the wrong conclusion about the mitigating
4 effect of Department of Justice policies and regulations on that potential constitutional violation.
5 (Twitter Oppo., Dkt. No. 34, 19:9-19.) Thus, the USAFA was directly addressed to correcting the
6 defects identified by Twitter, in the manner indicated by both *Mukasey* and *In re NSL*.
7 Consequently, Twitter’s contention that the USAFA does not moot its challenge to section 3511,
8 as currently alleged, is without merit.

9 Along those same lines, the USAFA’s changes to section 2709 make Twitter’s facial and
10 as-applied challenges to the prior versions of these nondisclosure provisions no longer germane.
11 Twitter alleged that section 2709 was a prior restraint and content-based restriction on speech that
12 was not narrowly tailored and lacked procedural safeguards consistent with strict scrutiny.
13 (Complaint ¶¶ 46, 47, 48.) The revisions to section 2709, as well as section 3511, in the USAFA
14 provide for additional safeguards on review of nondisclosure restrictions. Twitter’s challenges are
15 directed to provisions which no longer exist in the same form as when the action here was
16 brought.⁵ Moreover, Twitter framed its allegations as a claim that section 2709(c) was
17 unconstitutional as applied to Twitter “*via the DAG Letter.*” (Complaint ¶ 47, emphasis supplied).
18 The DAG Letter, to the extent it was an agency action, has now been superseded.

19 Finally, the Court has no need to decide the question of whether it should defer to the
20 jurisdiction of the FISC on the FISA-based claims here, since neither this Court nor the FISC
21 would have jurisdiction over a moot action.

22 In sum, the issues raised in the motion to dismiss are all mooted by the amendments to the
23 FISA statute by the USAFA. The motion to dismiss, on the grounds as stated, is **DENIED**.


24
25 _____
26 ⁵ Section 2709 incorporates revisions to the nondisclosure review process, as set forth in
27 the amended Section 3511. As the Court reads those provisions, a recipient who seeks court
28 review shifts the burden to the Government to justify nondisclosure with a statement of specific
facts, which permits the court to order nondisclosure subject to conditions as appropriate to the
circumstances. *See* 18 U.S.C. § 3511(b)(1)(A), (B), (C).

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However, in light of the amendments to the two key legal provisions challenged herein, and the apparent mootness of Twitter’s claims, the Court **ORDERS** on its own motion that Twitter file an amended complaint no later than **November 13, 2015**. The Court **SETS** a compliance hearing on Friday, November 20, 2015, at 9:01 a.m. If Twitter has filed its amended complaint timely, no appearance will be required and the Court will vacate the hearing. If no amended complaint has been filed, this action will be dismissed as moot.

IT IS SO ORDERED.

Dated: October 14, 2015



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE