

1 CINDY COHN (SBN 145997)  
cindy@eff.org  
2 LEE TIEN (SBN 148216)  
3 KURT OPSAHL (SBN 191303)  
4 JAMES S. TYRE (SBN 083117)  
5 MARK RUMOLD (SBN 279060)  
6 ANDREW CROCKER (SBN 291596)  
7 DAVID GREENE (SBN 160107)  
ELECTRONIC FRONTIER FOUNDATION  
815 Eddy Street  
San Francisco, CA 94109  
Telephone: 415/436-9333; Fax: 415/436-9993

8 RICHARD R. WIEBE (SBN 121156)  
wiebe@pacbell.net  
9 LAW OFFICE OF RICHARD R. WIEBE  
10 One California Street, Suite 900  
11 San Francisco, CA 94111  
Telephone: 415/433-3200; Fax: 415/433-6382

12  
13  
14  
15 *Counsel for Plaintiffs*

RACHAEL E. MENY (SBN 178514)  
rmeny@kvn.com  
PAULA L. BLIZZARD (SBN 207920)  
MICHAEL S. KWUN (SBN 198945)  
AUDREY WALTON-HADLOCK (SBN 250574)  
BENJAMIN W. BERKOWITZ (SBN 244441)  
JUSTINA K. SESSIONS (SBN 270914)  
KEKER & VAN NEST, LLP  
633 Battery Street  
San Francisco, CA 94111  
Telephone: 415/391-5400; Fax: 415/397-7188

THOMAS E. MOORE III (SBN 115107)  
tmoore@rroyselaw.com  
ROYSE LAW FIRM, PC  
1717 Embarcadero Road  
Palo Alto, CA 94303  
Telephone: 650/813-9700; Fax: 650/813-9777

ARAM ANTARAMIAN (SBN 239070)  
aram@eff.org  
LAW OFFICE OF ARAM ANTARAMIAN  
1714 Blake Street  
Berkeley, CA 94703  
Tel.: 510/289-1626

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
18 **OAKLAND DIVISION**

19 )  
20 ) CAROLYN JEWEL, TASH HEPTING,  
21 ) YOUNG BOON HICKS, as executrix of the  
22 ) estate of GREGORY HICKS, ERIK KNUTZEN  
23 ) and JOICE WALTON, on behalf of themselves  
24 ) and all others similarly situated,  
25 )  
26 ) Plaintiffs,  
27 )  
28 )  
29 ) v.  
30 ) NATIONAL SECURITY AGENCY, *et al.*,  
31 )  
32 ) Defendants.

Case No.: 4:08-cv-4373-JSW  
**PLAINTIFFS' OPPOSITION TO THE  
GOVERNMENT DEFENDANTS'  
EMERGENCY MOTION TO STAY THE  
COURT'S MARCH 10, 2014  
TEMPORARY RESTRAINING ORDER**  
  
Courtroom 5, 2nd Floor  
The Honorable Jeffrey S. White

1           Since March 10, 2014, the government has been under a Temporary Restraining Order  
2 issued by this Court prohibiting any destruction of evidence by the government pending the Court's  
3 resolution of the parties' dispute regarding the government's evidence preservation obligations.  
4 ECF. Nos. 189, 206. The government has never sought clarification of or relief from its duties  
5 under the TRO.

6           Earlier today (June 5, 2014), plaintiffs requested that the Court enforce its TRO; the basis  
7 for plaintiffs' request was their discovery this week of the government's continuing destruction of  
8 evidence relating to its interception of the content of Internet communications notwithstanding the  
9 Court's Temporary Restraining Order prohibiting any destruction. ECF No. 235. In response to  
10 plaintiffs' request, the Court today directed that the government respond by noon tomorrow (June  
11 6, 2014) and reiterated that in the meantime the government remained bound by the TRO which the  
12 Court issued nearly three months ago. ECF No. 236.

13           Now the government has moved for a stay of the TRO, a stay whose only purpose is to  
14 permit the government to continue destroying evidence. The government frames its request as a  
15 request for a stay of the Court's June 5, 2014 order (ECF No. 236), but that order merely reiterates  
16 that the government remains bound by the March 10, 2014 TRO's prohibition on the destruction of  
17 evidence, and confirms that the TRO includes the Section 702 materials.

18           The government's request for a stay of the TRO should be denied.

19           It is not credible that, as the government contends, simply refusing to destroy during the  
20 next 18 hours the communications it has intercepted will cause "the possible suspension of the  
21 Section 702 program." ECF No. 237 at 1. How can the *preservation* of these intercepted  
22 communications cause a "loss of access to lawfully collected signals intelligence information"? *Id.*  
23 That information will remain accessible even though it is being preserved.

24           More fundamentally, the unspoken but unmistakable foundation of the government's  
25 position is a contention that it never understood before this afternoon that the Court's TRO  
26 required it to preserve evidence relating to its interception of Internet communications. This, too,  
27 lacks any credibility, especially in light of the extensive discussions between Court and counsel at

1 the March 19, 2014 hearing on the evidence preservation dispute. The government's disregard for  
2 the past three months of its obligations under the Court's TRO should not be retroactively blessed  
3 by granting a stay that permits the government to continue destroying evidence.

4  
5 Dated: June 5, 2014

Respectfully submitted,

6  
7           /s/ Cindy Cohn          

CINDY COHN

LEE TIEN

KURT OPSAHL

JAMES S. TYRE

MARK RUMOLD

ANDREW CROCKER

DAVID GREENE

ELECTRONIC FRONTIER FOUNDATION

RICHARD R. WIEBE

LAW OFFICE OF RICHARD R. WIEBE

THOMAS E. MOORE III

ROYSE LAW FIRM

RACHAEL E. MENY

MICHAEL S. KWUN

BENJAMIN W. BERKOWITZ

JUSTINA K. SESSIONS

AUDREY WALTON-HADLOCK

PAULA L. BLIZZARD

KEKER & VAN NEST LLP

ARAM ANTARAMIAN

LAW OFFICE OF ARAM ANTARAMIAN

*Counsel for Plaintiffs*