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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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In the Matter of the Search of)	Case No. 23-SC-31
Information That is Stored)	
at Premises Controlled by)	
Twitter, Inc.)	
)	
UNITED STATES OF AMERICA,)	February 9, 2023
Interested Party,)	11:10 a.m.
)	Washington, D.C.
TWITTER,)	
Interested Party.)	

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**TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BERYL A. HOWELL,
UNITED STATES DISTRICT COURT CHIEF JUDGE**

APPEARANCES:

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Official Court Reporter

Proceedings reported by machine shorthand.
Transcript produced by computer-aided transcription.

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P R O C E E D I N G S

1
2 THE COURTROOM DEPUTY: Matter before the Court,
3 Case No. 23-SC-31, In the matter of the search of
4 information that is stored at premises controlled by
5 Twitter, Inc. Interested parties, United States of America
6 and Twitter, Inc.

7 Counsel, please come forward and state your names
8 for the record, starting with the government.

9 MR. WINDOM: Good morning, Your Honor.
10 Thomas Windom and Mary Dohrmann for the United States.

11 THE COURT: Yes. Good morning.

12 MR. HOLTZBLATT: Your Honor, Ari Holtzblatt for
13 Twitter.

14 THE COURT: All right. Who else is with you at
15 counsel table, if you would just introduce them again.

16 MR. HOLTZBLATT: I'm sorry. Ben Powell and
17 Whitney Russell.

18 THE COURT: And Mr. Varghese, as I understand, is
19 on his way.

20 MR. HOLTZBLATT: Mr. Varghese is in an interview
21 that could not be rescheduled. So I will be --

22 THE COURT: Okay. I thought we were waiting for
23 somebody.

24 MR. HOLTZBLATT: I'm sorry. Yes. Mr. Aaron
25 Zebley entered an appearance this morning and is on his way.

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1 He is actually outside the building. He will be joining
2 very shortly.

3 THE COURT: So we're not waiting for anybody?

4 MR. HOLTZBLATT: He is trying to get up here. But
5 we don't need to wait for him; I will be presenting.

6 THE COURT: I'm sorry. I had gotten a message
7 that the person who was supposed to be arguing today was
8 delayed, but to begin without him. I just want to make sure
9 the record is correct. I presumed it was Mr. Varghese since
10 that was the person who argued the last time we were here
11 earlier this week. But perhaps I misunderstood.

12 MR. HOLTZBLATT: I think something may have been
13 lost in communication. I will be presenting for Twitter
14 today. My colleague Aaron Zebley is on his way, and will be
15 here shortly.

16 THE COURT: Okay. Fine. Got it. Fine. Because
17 we're not waiting.

18 Okay. So as I look at this and look at the time
19 of the warrant issuance, I look at how far out we are from
20 compliance with the warrant, the representation by Twitter's
21 counsel when we met earlier this week that they could comply
22 by 5 p.m. on the 7th; and there was some compliance, I
23 think, by the deadline.

24 But I understand from the government's email to
25 chambers, with a copy to Twitter's counsel, that there has

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1 not been full compliance with the warrant. I want to just
2 find out today what happened, and where are we on compliance
3 with the warrant. Twitter has had quite some time to comply
4 with the warrant and have everything prepared to turn over,
5 so I am a little bit concerned about where we are.

6 Let me find out first from the government, since
7 we're here at the government's request, what is the
8 government expecting to happen today --

9 MR. WINDOM: Thank you, Your Honor.

10 THE COURT: -- other than counting up the amount
11 of the penalty?

12 MR. WINDOM: Yes, ma'am. A few things.

13 First of all, the government wanted to raise this
14 with Your Honor since it was inconsistent with what was
15 represented in court by Twitter counsel two days ago.

16 Second of all, we want compliance; that's the
17 entire purpose of these repeated proceedings and
18 conversations with counsel, is to get the information that
19 the Court ordered them to produce 13 days ago.

20 Each time we have received an email or had a
21 conversation with counsel over the last 48 hours, we have
22 not been left with any confidence that they have produced
23 everything, that they have a time frame to produce
24 everything, or that they even know the scope of the
25 repositories of information.

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1 Even this morning, when we had a phone call with
2 them, it seemed as if they were attempting to cabin one of
3 the requests in the warrant. The only way to describe the
4 end of the phone call after it concluded, I had felt like I
5 had been getting nickle-and-dimed for the prior 20 minutes
6 of conversation. We need the material. We need it now. We
7 needed it 13 days ago.

8 The purpose of this hearing is to impress upon
9 counsel in a way that apparently the government cannot, that
10 the meter is running. \$50,000 accrued at five o'clock two
11 days ago; \$100,000 yesterday; \$200,000 so far today. It
12 will continue to run until Twitter completely complies with
13 the warrant.

14 THE COURT: All right. So let's hear from you,
15 Mr. Holtzblatt.

16 MR. HOLTZBLATT: Thank you, Your Honor.

17 I would like to address three things that counsel
18 for the government just said: First, what we understood we
19 were producing at five o'clock on Tuesday; second, what we
20 have done since then -- actually, four things -- what
21 remains. And the final item that counsel for the government
22 mentioned about the single category where we discovered this
23 morning that we had a different understanding about what
24 that category represents, and I think it may be -- I
25 ultimately would like --

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1 THE COURT: Well, I am looking at Attachment B,
2 Part 1. We're just going to go through it line by line,
3 something tediously -- I tried to avoid at the last hearing;
4 but it seems like that kind of supervision of Twitter is
5 necessary here.

6 Do you have that in front of you, Mr. Holtzblatt?

7 MR. HOLTZBLATT: I do, Your Honor.

8 THE COURT: Let's start with number 1.

9 All business records and subscriber information in
10 any form kept pertaining to the subject account starting
11 with: A, identity and contact information, past and
12 current, including full name, email address, physical
13 address, date of birth, phone number, gender, and other
14 personal identifiers.

15 Has that been turned over?

16 MR. HOLTZBLATT: Your Honor, I was prepared to
17 identify for you the items that we understand are not yet
18 turned over --

19 THE COURT: Well, it's the same way of doing it.
20 What have you turned over? What is missing?

21 So everything in "A" turned over?

22 MR. HOLTZBLATT: The one item that I know that is
23 not yet turned over but is about to be turned over is the
24 information regarding gender.

25 THE COURT: Which you are still determining

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1 whether you have or not?

2 MR. HOLTZBLATT: No. We have determined that we
3 have the gender information. We spoke to the government
4 about the gender information yesterday.

5 The email communication from the government
6 suggested that the gender field was not necessarily the most
7 pressing of information, but we have gathered it. And, I
8 think, as we speak are producing the gender field
9 information.

10 THE COURT: And everything else in "A," I am
11 understanding from what you said, has been turned over.

12 Is that a correct understanding?

13 MR. HOLTZBLATT: That is my understanding.

14 THE COURT: All right. B. Do I have to read it
15 to you or can you read it yourself?

16 Has everything in B been turned over?

17 MR. HOLTZBLATT: Your Honor. Can you bear with me
18 for one second?

19 (Whereupon, Twitter counsel confer.)

20 MR. HOLTZBLATT: Your Honor, we have turned over
21 information in all categories in B with one exception that
22 we are -- we don't possess in the manner in which it is
23 described in B, and so we're attempting to turn over what we
24 do have.

25 THE COURT: What is that precisely?

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1 MR. HOLTZBLATT: All associated accounts,
2 parentheses, including those linked by machine, cookie, IP
3 address, email address, or any other account or device
4 identifier, that's not -- "associated accounts," as I
5 understand it, is not a category of information that exists
6 in that term within our systems. And so we are attempting
7 to gather a proxy for that, but it's not --

8 THE COURT: What is the proxy you are gathering
9 for that?

10 (Whereupon, Twitter counsel confer.)

11 MR. HOLTZBLATT: We are --

12 THE COURT: Is there a reason why Ms. Russell just
13 has to just sit there as opposed to speaking, since she
14 seems to be the person with the answers?

15 MR. HOLTZBLATT: No, Your Honor. We have
16 collectively gathered the information about the answers. So
17 before I make a representation to you I wanted to confirm
18 that information because I don't want to make an incorrect
19 representation to Your Honor.

20 THE COURT: Of course not. We have already been
21 through that.

22 Okay. So you are still figuring out all of the
23 associated account information in 1B.

24 How long will it take you to figure that out,
25 produce it, collect it, and produce it?

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1 MR. HOLTZBLATT: Well, Your Honor, we don't -- the
2 issue, Your Honor -- there isn't a category of "associated
3 account information"; that's not information that Twitter
4 stores.

5 What we are doing right now is manually attempting
6 to ascertain links between accounts. But the ascertainment
7 of links between accounts on the basis of machine, cookie,
8 IP address, email address, or other account or device
9 identifier is not information that Twitter possesses, it
10 would be information that Twitter needs to create. So
11 that's the reason why we had not previously produced it
12 because it's not a category of information that we actually
13 possess.

14 So what we are trying to do is be -- I would
15 say -- because it's not information --

16 THE COURT: Okay. I am going to do this in a way
17 that makes sense on the record as we're talking about
18 things.

19 Mr. Windom, with respect to the "all associated
20 accounts," have you obtained -- has the government obtained
21 information like that before from Twitter, if you know?

22 MR. WINDOM: I can't make that representation with
23 respect to Twitter.

24 With any number of other electronic communication
25 providers, they keep that information in a consistent form.

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1 To the extent that Twitter does not, it should be
2 a simple process. You have cookies associated with an
3 account; you have the email for the subscriber information;
4 perhaps you have the phone number; you definitely have the
5 IP addresses. Control F that through your system to see
6 what other accounts have come from those IP addresses, are
7 linked to that email address, are linked to the phone
8 number, are linked to the same cookies.

9 I don't profess to be a technological wizard, but
10 it does not seem to be a complex issue.

11 THE COURT: And all associated --

12 MR. HOLTZBLATT: Your Honor.

13 THE COURT: Excuse me. Mr. Windom, you escaped
14 too fast.

15 MR. WINDOM: Sorry, ma'am.

16 THE COURT: "All associated accounts" information
17 is helpful and useful for what reason?

18 MR. WINDOM: It is, as explained more fully in the
19 warrant -- but for these purposes, it is a useful tool in
20 identifying what other accounts are being used by the same
21 user or by the same device that has access to the account.

22 As oftentimes in any number of cases, user
23 attribution is important. And if there are other accounts
24 that a user is using, that is very important to the
25 government's investigation.

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1 THE COURT: All right.

2 MR. HOLTZBLATT: So, Your Honor, all providers are
3 not the same. And it is -- I believe it is correct that
4 other providers possess this information in this form.

5 The warrant, in Section 1 of the warrant, is a BSI
6 request for basic subscriber information. It, therefore, is
7 asking for information that exists, not information that
8 needs to be created.

9 What I understand the government to be asking --
10 and we are -- we were trying to be cooperative, and our
11 communications with the government have aimed at attempting
12 to assist the government -- is for us to create information
13 that does not exist, as opposed to produce information that
14 does exist. We are trying to work with the government. But
15 in terms of compliance with the warrant, the creation of BSI
16 that does not exist, I think, is beyond the scope of the
17 warrant.

18 THE COURT: Well, it's business records and
19 subscriber information in any form kept. You are saying
20 because of the word "kept" you don't have that information
21 as a business record that you maintain?

22 MR. HOLTZBLATT: That's right. If the records --
23 if the linkage between accounts, which is what we understand
24 this category to be referring to, is not itself a piece of
25 information that we keep, then it's not a business record

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1 that we would ordinarily produce.

2 What I understand the government to be asking is
3 for us to analyze our data, as opposed to produce existing
4 data. And we are trying to work with the government in that
5 respect, but that is the reason that it is not something
6 that -- that is a different category of information.

7 THE COURT: All right. 1C, length of service, has
8 that been produced?

9 MR. HOLTZBLATT: We have produced length of
10 service including start date; and I don't know the answer to
11 the rest of 1C.

12 THE COURT: Ms. Russell, do you know the answer?
13 (Whereupon, Twitter counsel confer.)

14 MR. HOLTZBLATT: We have produced everything, but
15 there is no credit card or bank account number information
16 associated with the account.

17 THE COURT: Really? Then how did somebody pay for
18 that account at all, or --

19 MR. HOLTZBLATT: The Twitter services --

20 THE COURT: -- or identify themselves -- that's
21 just one way to identify yourselves as an account user? You
22 don't have to provider that information to use a Twitter
23 account?

24 MR. HOLTZBLATT: That's correct, Your Honor. The
25 Twitter service is free.

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1 THE COURT: All right. D?

2 MR. HOLTZBLATT: Yes. We have produced that
3 information.

4 THE COURT: E?

5 MR. HOLTZBLATT: We have produced that information.

6 THE COURT: And F?

7 MR. HOLTZBLATT: We have produced that information.

8 THE COURT: G?

9 MR. HOLTZBLATT: We have produced that information.

10 THE COURT: H?

11 MR. HOLTZBLATT: This is the source of our
12 divergence of understanding with the government that we
13 discussed with the government this morning. Until we had
14 this discussion this morning, we did not understand how --
15 we had a different understanding of what 1H refers to. And
16 if Your Honor will permit, I can explain --

17 THE COURT: Well, for purposes of the record, H
18 is: Communications between Twitter and any person regarding
19 the account including contacts with support services and
20 records of actions taken.

21 It seems pretty plain on its face.

22 Have you reached an understanding now with the
23 government as to the scope?

24 MR. HOLTZBLATT: No. We have attempted and would
25 like to continue to attempt to reach an understanding with

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1 the government as to the scope if Your Honor would permit.

2 THE COURT: I am going to dictate the scope right
3 now: All communications that Twitter had with any person
4 regarding this account including any contacts with support
5 services and records of actions taken. Is that clear?

6 MR. HOLTZBLATT: Well, Your Honor --

7 THE COURT: What don't you understand about what I
8 just said?

9 MR. HOLTZBLATT: We understand 1H to refer to
10 basic subscriber information because it appears in Section 1
11 of the warrant.

12 THE COURT: I think it speaks for itself, and it
13 is not just "basic subscriber information," it is what it
14 says.

15 So have there been communications between Twitter
16 and any person regarding this account -- and given the fact
17 that it was turned off at one point and then turned back on
18 again -- one would think that there would be a lot of
19 communications; and all of those communications would be
20 included.

21 Where are you puzzled as a company?

22 MR. HOLTZBLATT: This is where we are puzzled,
23 Your Honor. 1H appears in Section 1 of the warrant which
24 otherwise refers -- every other category in Section 1 refers
25 to basic subscriber information.

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1 THE COURT: Forget -- forget what you think this
2 category is.

3 It's all business records and subscriber
4 information in any form kept pertaining to the subject
5 account.

6 So any communications between Twitter and anybody
7 else regarding the account -- if it's kept, it's
8 communications regarding the account and subject to that
9 paragraph.

10 MR. HOLTZBLATT: We had understood this category
11 to be defined by the including clause here, which says:
12 Contacts with support services and records of actions taken.

13 We have searched for that information, and are in
14 the process of producing just, I think, two records. What
15 the government explained --

16 THE COURT: Well, that's just including contacts.
17 "Including" does not mean only limited to. "Including"
18 means including that but any other communications as well.

19 MR. HOLTZBLATT: We understand that is how the
20 government communicated to us their understanding of this
21 clause today because it appears in the basic subscriber
22 information section.

23 THE COURT: So the government agrees with what I
24 have just read to you, that that is what the scope is?

25 MR. HOLTZBLATT: So we have done -- we have

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1 attempted to conduct searches today, in light of the
2 conversation we had this morning with the government, to
3 understand the scope of this. What we have found is --
4 based on certain types of searches -- we are talking about
5 millions of emails that include, for example,
6 realDonaldTrump. That is a dramatically broader scope of
7 information than we had understood would be covered by this
8 category. And what we said to the government --

9 THE COURT: Why don't you explain that more.

10 MR. HOLTZBLATT: Why don't I explain what we
11 understood it to mean or what we --

12 THE COURT: No. I understand you thought it was
13 limited to two records with support services; and that's
14 clearly not the full scope of what is covered in H.

15 So based on what the plain text of H means, and
16 you just mentioned -- made reference to millions of emails,
17 what would the response mean to the plain text of this?

18 MR. HOLTZBLATT: So what -- if what the government
19 believes we need to produce for this category -- and we are
20 prepared to be as cooperative as we can be with the
21 government in doing that.

22 The government this morning communicated to us
23 that they were most interested in communications between
24 government officials and Twitter regarding the subject
25 account as captured by this.

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1 If that is what we are to produce, which is not
2 what we had understood was covered by this category until
3 the conversation this morning, then, what we would normally
4 do for that kind of a communication production would be to
5 meet and confer with the government or -- if we were in
6 civil litigation with the opposing party -- identify search
7 terms and, potentially, custodians that would produce a
8 reasonable set of records that we can review and then
9 produce in order to produce a manageable amount of
10 information. That's what we proposed to the government this
11 morning, is that we meet and confer, try to understand what
12 search terms would be effective at narrowing down the
13 search.

14 As I said, when we did a search for -- simply the
15 keyword search of @realDonaldTrump on emails within the
16 Twitter system, it produced millions of hits. I think there
17 are other ways of constructing a search that would produce
18 an appropriate scoped search for this category.

19 THE COURT: And those millions of hits consist of
20 people concerned about Twitter turning off the account, is
21 that why it was millions? Why would it be millions?

22 MR. HOLTZBLATT: Well, that's with only the search
23 term @realDonaldTrump, so that's obviously broader than what
24 Your Honor just said.

25 H says: Communications between Twitter and any

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1 person regarding the account. To give meaning to that in --
2 to be responsive to the government about what they are most
3 interested in with respect to this category, we proposed --
4 and would still propose -- that we meet and confer,
5 understand what a set of search terms would be that would
6 obtain the kind of information that the government is trying
7 to obtain under this category --

8 THE COURT: Mr. Holtzblatt, why are -- are there a
9 million emails? Why are there a million emails? From whom?

10 MR. HOLTZBLATT: Within the Twitter email system.
11 It's not limited to emails -- between people outside the
12 Twitter set of employees and Twitter itself.

13 So we -- so, for example, one way of addressing
14 this category would be to limit our search to -- that was
15 from 2006 to the present. So there is no date limitation
16 within Category 1, which is another reason we understood it
17 to be BSI information.

18 So what would help to narrow this down would be to
19 impose a date limitation, which is not currently within
20 Category 1; to, perhaps, add a set of to/from or bcc, or cc
21 recipients. For example, if the government is interested in
22 specifically communications from government officials, then
23 we can do a: To/from .gov..

24 THE COURT: Okay. Please sit down.

25 Mr. Windom, do you really need that from 2006 to

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1 the present on H?

2 MR. WINDOM: This is the first time I have heard a
3 complaint about a date limitation on 1H. The answer is no.
4 I don't need it from 2006 forward.

5 If we were to pick a date right now, I would say
6 October 1st of 2020 through January 20th of 2021, which is
7 consistent with 1F.

8 But this information about, you know, what it is
9 that we say that we're most specifically interested in, I
10 did not represent that we were most interested in
11 communications between government officials and Twitter
12 regarding the account.

13 We did point out that -- much as Your Honor did
14 just now -- it seemed beyond comprehension that there
15 weren't communications regarding the account when it was
16 suspended and terminated, but that doesn't mean government
17 officials at least cabined to that. It can mean campaign
18 officials. It can be anybody acting on behalf of the user
19 of the account, or the user of the account himself.

20 THE COURT: So any person regarding the account is
21 broader than what you just said, though, Mr. Windom.

22 "Any person regarding the account" is quite broad.
23 It could be all the complaints of all of the Trump
24 supporters out in the world saying: What are you doing,
25 Twitter?

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1 So I take it, from what you just said, that you
2 are interested only in -- rather than "any person," a person
3 who was the subscriber or user of the account or on behalf
4 of that person regarding the account?

5 MR. WINDOM: Yes, ma'am. An agent thereof.

6 THE COURT: All right. How long -- with that
7 clarification, Mr. Holtzblatt, how long will it take Twitter
8 between -- with the date limitation and the limitation on
9 any person, to produce records?

10 MR. HOLTZBLATT: Your Honor, I just want to make
11 sure I understand the limitation.

12 There are two additional limitations that are
13 being placed on 1H, one is -- is that it be limited by date,
14 from October 1st, 2020, to January 20th, 2021, is that
15 correct, or the end of January --

16 THE COURT: January 20th, 2021.

17 MR. HOLTZBLATT: -- January 20th, 2021, and that
18 the individuals covered would be only the owner of the
19 account or an agent of the owner of the account for
20 communications?

21 I will need to talk to my client about how long it
22 will take. But what I can represent to the Court is that,
23 within an hour of today's hearing, I will be able to provide
24 an estimate. And my hope would be that I will be able to
25 produce today that information, but I don't feel like I can

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1 make a representation without first talking to my client
2 about it.

3 THE COURT: All right. Is that sufficient,
4 subscriber or agent of the user of the account?

5 MR. WINDOM: Yes, ma'am, with the qualification
6 that I can't know the universe of who those agents or
7 putative agents may be.

8 THE COURT: Well, how is Twitter going to know
9 that?

10 MR. WINDOM: It would be beyond all comprehension
11 to imagine that, with this account, there is not a file
12 known within the general counsel's office or some other
13 liaison office within Twitter regarding the account with
14 everything that transpired during the relevant time period.

15 THE COURT: We'll see how that goes because
16 hopefully -- I don't want to see you all here again. I am
17 sure none of you want to be here again.

18 All right. So now we're on to 2, which is --

19 MR. HOLTZBLATT: Just on one -- on the agents,
20 Your Honor, one category that I could propose is the
21 representatives of -- that subject to the account assigned
22 to be responsible for all presidential records with respect
23 to the archivist, so there are a limited -- a defined and
24 limited set of individuals who were assigned to be
25 responsible for presidential records. And as we have talked

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1 about before, at least during the relevant time period, both
2 the archivist and Twitter understood these to be
3 presidential records. Whether or not -- I know Your Honor
4 has some questions about that. But in terms of the
5 contemporaneous understanding of the parties, that's how
6 Twitter understood the records --

7 THE COURT: Well, when this account was set up,
8 was there a communication from the person or persons who set
9 up the account with Twitter as to who could access it and
10 who could communicate regarding the functionality and any
11 other concerns about the account?

12 MR. HOLTZBLATT: The account was set up in 2006,
13 Your Honor. A great deal transpired between 2006 and 2020
14 with respect to the individual who is the owner of the
15 account. So I don't -- there is obviously -- there is
16 sign-in information with the account, but you don't need to
17 provide very much information to open a Twitter account. So
18 it's -- it may be surprising to the government or to the
19 Court, but there is not a -- we don't keep dossiers on users
20 in that sense.

21 I can represent to Your Honor that the current
22 email -- we have a name of an individual who is the current
23 email contact for the account, and that is a person who is a
24 credible --

25 THE COURT: What is that name?

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1 MR. HOLTZBLATT: [REDACTED]. So I think we can
2 certainly look at the NARA -- the individuals who are
3 assigned to be agents for the account --

4 THE COURT: And expand it beyond [REDACTED] to
5 include those people as well?

6 MR. HOLTZBLATT: That's correct, Your Honor.

7 THE COURT: Right.

8 Mr. Windom, I am not sure what else they can do.

9 MR. WINDOM: Your Honor, that's a starting point.
10 We can add names to the extent we think appropriate.

11 I will say this, the letter that they're talking
12 about was signed on January 19th and includes the sitting
13 Assistant Attorney General for the Office of Legal Counsel.
14 I highly doubt that that person is having communications
15 with Twitter in the relevant time period about this account.
16 I would not cabin it to that --

17 THE COURT: Well, I know the NARA representatives
18 are -- limiting it to them would be useless, generally
19 useless.

20 MR. WINDOM: Yes, ma'am.

21 THE COURT: I am fully aware of that. But [REDACTED]
22 [REDACTED] would not be.

23 MR. WINDOM: [REDACTED] is one person I can
24 consult, and add additional names to the extent that their
25 list is not robust.

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1 THE COURT: All right. Well, you can provide the
2 list of names to them.

3 MR. WINDOM: Thank you, Judge.

4 THE COURT: All right. We're on to 2A,
5 Mr. Holtzblatt.

6 MR. HOLTZBLATT: Thank you, Your Honor.

7 THE COURT: And for purposes of the record, so
8 we're all clear, 2 states that the warrant demands: All
9 content, records, and other information relating to
10 communications sent from or received by the subject account
11 from October 2020 to January 2021 including but not limited
12 to: A, content of all tweets created, drafted, favorited,
13 liked, or re-tweeted by the subject account including all
14 such deleted tweets, and all associated multimedia,
15 metadata, and logs.

16 Has that been produced?

17 MR. HOLTZBLATT: Yes, Your Honor. We have --

18 THE COURT: You can stop at "yes," if it's all
19 been produced. If there is an exception --

20 MR. HOLTZBLATT: It's more complicated, so I was
21 going to explain.

22 THE COURT: Okay. That's unfortunate.

23 MR. HOLTZBLATT: At 5 p.m. on February 7th, I
24 think that was our day, we produced all data in this
25 category that was in the standard production tools of

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1 Twitter.

2 We communicated with the government on
3 February 8th that there were prior preservations of the
4 subject account that are not within Twitter's standard
5 production tools and that would, therefore, require
6 engineering to obtain information. And we asked the
7 government whether it wished us to undertake that effort,
8 and the government confirmed that it did.

9 And we have since then -- when we produced on
10 February 7, we indicated to the government in our production
11 letter that there was potentially deleted data that might
12 exist, which is what would be found in prior preservations,
13 but that it would require additional engineering efforts.

14 At 2 a.m. last night, or this morning, Twitter
15 produced additional information from those prior
16 preservations that falls within category 2A. There are --

17 THE COURT: When you say "prior preservations"
18 what are you talking about?

19 Prior litigation holds of some kind or that you
20 had a stash or a cache of preserved data sitting in
21 different places? What are you talking about?

22 MR. HOLTZBLATT: I am referring -- with respect to
23 this particular account, I am referring to preservations
24 from two specific dates.

25 There is a preservation that was made that

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1 includes the subject account covering January 3rd to 9th,
2 2021. There is a second preservation of this that includes
3 this account that covers January 11 to 12, 2021.

4 Those are collections of data that -- they are
5 not -- it's not coterminous with the categories that would
6 exist in the active account right now and -- and that's data
7 that does not exist within a production environment. So
8 it's not data that you can just click -- we have a system to
9 just click a button and produce, which is why we indicated
10 that further engineering efforts might be necessary.

11 We asked the government if they wished us to
12 undertake those efforts. We had an engineer working through
13 the night, after the government asked us to, to undertake
14 those efforts. At 2 a.m. in the morning we produced
15 additional information that came from those preservations.

16 There are two categories of information that --
17 actually, I'm sorry, three categories of information that we
18 are still working to produce because of the engineering
19 challenges associated.

20 One of those categories is the list of -- I am not
21 sure this is from 2A. But I think, for purposes of
22 coherence, it would be helpful for me to describe it now
23 because it connects to this preservation; that is,
24 followers -- a list of followers for this account that were
25 contained within the January 11 through 12th prior

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1 preservation. We have segregated that information. It is a
2 complicated and large set of information. And we are unable
3 to deliver it in the manner that we normally deliver
4 information to law enforcement, which is to send a token.
5 We believe right now it would require physical media to put
6 that information on and to hand it over to the government.

7 This morning we indicated to the government: If
8 there is a mechanism, like an FTP site or something, that
9 you have that you can work with us, we would like to work
10 with you on this. We have it. We have segregated it. We
11 just don't currently have a tool that allows us to produce
12 it to you. So that --

13 THE COURT: This is really just a list of
14 followers attached to the preserved account from January 11
15 through 12, 2021?

16 MR. HOLTZBLATT: That's this particular -- there
17 are two others that I need to address, but that's this
18 particular one that I am addressing. That's correct, Your
19 Honor.

20 THE COURT: Okay. Category two of the three.

21 MR. HOLTZBLATT: As I mentioned, Your Honor, there
22 were two prior preservations, and then there is the current
23 production tools. In two of the three of those sets, the
24 January 3 through 9 and the current one, we have produced
25 the tweets and related tweet information for the account.

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1 In the January 11 to 12th prior preservation, the
2 way that the tweet and tweet-related information is stored,
3 it goes all the way back to 2006. We don't have a
4 warrant -- that is contents of user communications. We
5 don't have a warrant that would permit us to produce the
6 entirety of that information. So what we have is a tool
7 that -- what we refer to as a redaction [sic] tool or a
8 trimming tool. Because this is not a production
9 environment, a human being has to go in and manually trim
10 the information to isolate the date range. That, as I think
11 Your Honor can understand, is a laborious process, including
12 for this particular account, given the time frame; and we
13 need to isolate it, I think, over a three-month, four-month
14 period, I'm sorry, Your Honor. So we are undertaking it.

15 We are underway on that effort, but the second
16 piece of information that we are working on producing but
17 have not yet produced is the tweets for the January 11 to
18 12th prior preservation for the subject account as we
19 undergo the trimming process.

20 THE COURT: Okay. And how long will it take you
21 to produce -- do that trimming process?

22 MR. HOLTZBLATT: I am hopeful that we will be able
23 to finish it today. I don't know that we will be able to
24 finish it today. What I would propose to the government --
25 what we have proposed and what we would propose again is

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1 that we provide updates this afternoon on where we are with
2 that engineering process.

3 We are working as, I think, evidenced by having an
4 engineer come in overnight and work with this tool through
5 the night. We are working very diligently to try to produce
6 this information. We have produced this category of
7 information for two of the three repositories where this
8 type of information is held, and we are working on this last
9 one --

10 THE COURT: And these tweets in the preserved data
11 set from January 11 through 12, 2021, are different from in
12 the current -- your current status of the account?

13 MR. HOLTZBLATT: That's a great question, Your
14 Honor.

15 So they are probably not different and they are
16 certainly not, in any large sense, different. It is
17 possible that between when the account was suspended on
18 January 8th, which is before this preservation occurred, and
19 then it was reinstated recently -- it is conceivable that,
20 after it was reinstated, someone that has access to the
21 account deleted some of the tweets. If that happened, they
22 would be present in the January 11th and 12th, but not in
23 the current one. I don't know. It may be -- I don't know.

24 THE COURT: Okay. I understand.

25 The third category of information that you are

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1 still working on.

2 MR. HOLTZBLATT: The third category is something
3 called fleets with an "F." I will be honest with you, Your
4 Honor, until this morning I didn't know that that was a
5 content category that existed. I am a Twitter user and have
6 worked with Twitter a long time; that was not something that
7 I was aware of.

8 But we are collecting that from the January 11th
9 through 12th production set, and only that set; and it
10 presents, I believe, a similar problem, of having to trim it
11 down. We're working on that well.

12 THE COURT: What precisely is fleets?

13 MR. HOLTZBLATT: It is similar to tweets, and I
14 don't know more than that, Your Honor.

15 THE COURT: You don't use "fleets."

16 MR. HOLTZBLATT: I had not heard of fleets until
17 this morning.

18 THE COURT: And was fleet used on this account?

19 MR. HOLTZBLATT: It is a vanishing tweet.

20 THE COURT: A vanishing tweet.

21 MR. HOLTZBLATT: I guess fleet -- that makes
22 sense, fleeting.

23 THE COURT: Okay. So it's a vanishing tweet. And
24 do you know whether that vanishing tweet or fleet
25 functionality was active on this account? And are you able

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1 to tell that?

2 MR. HOLTZBLATT: I don't, as I stand here now,
3 know whether it was. If there is data -- if there is fleet
4 data in the prior preservation from January 11 and 12th,
5 then that would be -- it would have been active, and that
6 would correspond to it, and that's what we're working to
7 obtain.

8 THE COURT: Okay. So let me interrupt you for a
9 second.

10 Mr. Windom, of these three categories is the
11 government particularly interested in Category No. 1, this
12 list of followers for the account from January 11
13 through 12, 2021?

14 MR. WINDOM: Yes, Your Honor.

15 The answer is going to be yes for all three. I
16 have some additional information that may be of assistance.

17 This is a perfect example of why it was imperative
18 that we come before Your Honor. Twitter counsel has just
19 mentioned two things that we have never heard of before in
20 our calls.

21 What we were told was that there was one
22 preservation done of the entire history of the account on
23 January 11th. This is the first time we are hearing about
24 another preservation between January 3rd and January 9.

25 Second, I have never heard of "fleets" in part of

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1 any discussion that we have had. I don't know if that is
2 information in this account; it may or may not be. It still
3 will be relevant, it still will be responsive.

4 THE COURT: Well, it seems to me that that's a
5 functionality that you would probably understand from the --
6 1C, types of services utilized.

7 MR. WINDOM: Yes, ma'am.

8 THE COURT: But perhaps people -- representatives
9 of Twitter can explain why that's just not indicated in 1C,
10 which is: Functionality uses of the account?

11 MR. WINDOM: I can't speak to that given our
12 review of the material at this point. I do want to point
13 out, though, Your Honor, what Twitter counsel told us, in
14 terms of the preservations, they said that according to
15 Twitter's policies, if the user deletes tweets or direct
16 messages Twitter, nonetheless, retains that information for
17 14 days. These two prior preservations could have deleted
18 tweets, could have deleted direct messages that are not part
19 of the instant production from this year.

20 We know with certainty that there were deleted
21 tweets on January 6th. Twitter said that the President had
22 to delete those tweets in order to reinstate his account
23 from suspension. We do not know if those deleted tweets are
24 part of what we got from this year's preservation versus
25 either of those two prior preservations. That is one of the

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1 reasons it is very concerning to us.

2 I will also point out that the introductory
3 paragraph in the warrant for Part 1 specifically says
4 anything in their holdings -- it mentions including any
5 preservations that were made pursuant to 18 U.S.C. -- I
6 think it is 2703.

7 It is not clear to us whether these preservations
8 were made pursuant to a federal order or just for internal
9 reasons. But, in any event, that opening paragraph of
10 Part 1 clearly covered all of these things. And all of the
11 problems that they say they're encountering and redacting,
12 and going back and looking at things, we're 23 days from the
13 date that the Court entered an order and they're just
14 starting to learn about things now.

15 THE COURT: Okay. So were these -- I mean, I
16 didn't pursue the preservation orders and why they were in
17 place, presuming that they were government orders and you
18 might already know about those. But were these government
19 preservation requests under the Stored Communications Act?

20 MR. HOLTZBLATT: So we don't believe they were,
21 but the individuals who would know definitively are no
22 longer employed with Twitter. But we don't believe that
23 these are 2703; and one of the two is definitely not.

24 That's what I thought, yes.

25 One of the two is certainly not, and the second

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1 one we don't know the answer.

2 THE COURT: Doesn't Twitter keep track of why
3 they're preserving data?

4 MR. HOLTZBLATT: Your Honor, this particular time
5 frame --

6 THE COURT: Like, which order, for how long, and
7 so on?

8 MR. HOLTZBLATT: So I don't know -- yes.

9 THE COURT: Does Twitter keep track of why it's
10 preserving data and pursuant to which order?

11 MR. HOLTZBLATT: So I don't know -- I have two
12 answers, Your Honor. As a general matter, I don't know the
13 answer to your question.

14 In this particular instance, we do not have a
15 record of a government request that corresponds to either of
16 these two preservations.

17 THE COURT: Interesting. Okay.

18 MR. HOLTZBLATT: So if a negative pregnant is to
19 be followed, then it would suggest that these were done not
20 pursuant to a preservation order. But I cannot -- I do not
21 wanted to stand up here and make a representation to Your
22 Honor that I don't know to be true.

23 So I can tell you we do not have a record. I know
24 that one of the two was not; and I don't know the answer as
25 to the other one.

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1 THE COURT: Okay. All right. And for the -- let
2 me just go back for one second just to make sure my notes
3 are complete.

4 For Category 1, the list of followers, did you
5 tell me when you think that is going to be produced?

6 MR. HOLTZBLATT: We need the government's help
7 with this. We have it ready to go, it's simply a question
8 of how to do it --

9 THE COURT: He just needs to know where to do it.

10 MR. HOLTZBLATT: If the government would like us
11 to deliver a hard drive to the FBI office in San Francisco,
12 we can do it today. If they would like us to do it to an
13 FTP site and they can provide us an FTP link, we can do it
14 today. We stand ready to produce that as soon as we have a
15 mechanism to do it.

16 THE COURT: Okay. Mr. Windom, on that issue?

17 MR. WINDOM: I am advised that there is an FTP
18 link in their email in-box now.

19 MR. HOLTZBLATT: Great.

20 THE COURT: Okay. So that can start now.

21 With respect to 2, the time frame is possibly
22 today, possibly tomorrow; no promises on that. But you are
23 going to keep the government updated on the status of two.

24 And for the fleets, what is your time frame?

25 MR. HOLTZBLATT: So the fleets is only as to one

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1 of the three repositories we're talking about, January 11
2 through 12.

3 THE COURT: Right.

4 MR. HOLTZBLATT: That's in the same category as
5 the tweets for January 11 and 12. I am hopeful that we will
6 have it today. I can commit to having -- to providing an
7 update to the government this afternoon about where we stand
8 with that effort; and we are working around the clock.

9 THE COURT: Okay. So you are going to give
10 Mr. Windom and Ms. Dohrmann an update on both 2 and 3, let's
11 say, by 4 p.m. today if you haven't delivered everything by
12 then.

13 MR. HOLTZBLATT: Yes, Your Honor.

14 THE COURT: Okay. Let's move on to B, the content
15 of all direct messages, the DMs: Sent from, received by,
16 stored in draft form, in or otherwise associated with the
17 subject account including attachments, multimedia, header
18 information, metadata, and logs.

19 Am I understanding correctly, Mr. Holtzblatt, that
20 that has been produced, to the extent it's subject to your
21 standard production tool, but to the extent that this data
22 falls in the two preserved caches --

23 MR. HOLTZBLATT: We have also produced --

24 THE COURT: You have also produced it?

25 MR. HOLTZBLATT: That is -- happily, that was one

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1 of the things our engineers were able to pull at 2 in the
2 morning; and that included deleted direct messages and not
3 just nondeleted, but also deleted direct messages.

4 THE COURT: And then 3, content which -- for the
5 record's clarity, 3 asked for: All content records and
6 other information relating to all other interactions between
7 the subject account and other Twitter users from
8 October 20th to January 20, 2021 including but not limited
9 to -- this is where we get into the, A, users the subject
10 account has followed, unfollowed, muted, unmuted, blocked or
11 unblocked, and all users who have followed, unfollowed,
12 muted, unmuted, blocked or unblocked the subject account.

13 Do you want to give me the status of that?

14 MR. HOLTZBLATT: So I -- the one category that is
15 not produced from that is this physical media, this
16 production that we need to do, I guess, through an FTP site
17 that's in my email box or George's, Mr. Varghese's --

18 THE COURT: Which is the Category 1 that you have
19 referred to before; and you are ready to produce that today?

20 MR. HOLTZBLATT: We are ready to produce that
21 today.

22 THE COURT: Got it. Via the FTP site or mechanism.

23 B, all information from the connect or
24 notifications tab for the account including all lists of
25 Twitter users who have favorited or re-tweeted tweets posted

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1 by the accounts, as well as all tweets that include the user
2 name associated with the account, i.e., mentions or replies.

3 MR. HOLTZBLATT: So, Your Honor, this is a
4 category we have not produced, and I want to explain why.

5 The items in 3 are all date limited. This is not
6 a category of information that was -- is contained within
7 the prior preservation, so it's not saying we can go back to
8 January of 2021 and collect to fit it within the time frame.

9 All we have that could conceivably fall within
10 this category is information that is there today. This is
11 dynamic information, so it's information that changes. And
12 so the information that would be contained in this today is
13 a mix of information that might have been responsive to this
14 category and information that is definitely not. Because it
15 is contents of communications, we don't believe we can
16 produce without a warrant the information that's available
17 in this category on our systems today because it is -- it
18 includes a category of information that goes beyond the
19 scope of the warrant. So we don't have a way of
20 disaggregating this information --

21 THE COURT: Meaning, you don't have a way to put a
22 time frame on it?

23 MR. HOLTZBLATT: That's correct, Your Honor.

24 It is information that -- because it's dynamic --
25 whatever is in the account today is not what was in the

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1 account at the time -- at the relevant time frame.

2 THE COURT: I see.

3 MR. HOLTZBLATT: And I don't -- so I don't know if
4 this is important to the government or not. If it is, we
5 have to come up with a different solution. I don't think we
6 actually can -- I don't think we are permitted to produce
7 what we have today.

8 THE COURT: Okay. Well, let me just --
9 Mr. Windom, do you want to think about that or do you want
10 to respond?

11 Do you think Mr. Zebley is standing outside the
12 locked door?

13 MR. HOLTZBLATT: I think there is a chance.

14 THE COURT: Could you check? Poor Mr. Zebley.

15 MR. WINDOM: Should I wait, Your Honor, or
16 proceed?

17 THE COURT: Proceed. In my chambers we wait for
18 no man.

19 MR. WINDOM: Thank you.

20 Your Honor, I mean, the short answer is of course
21 it's important to us. Just by PC -- for it to be in the
22 warrant, and Your Honor signed a warrant with this in it, I
23 don't understand -- I just don't understand the explanation
24 that was given as to what exists or does not exist.

25 It sounds like they have more information than is

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1 responsive and so there can be an overproduction of
2 material. Honestly, I am not clear what they're saying; nor
3 do I understand if the two preservations that they have
4 identified today would somehow ameliorate the problem that
5 they have just raised at the podium.

6 I don't understand the technology behind it. If
7 they would like to explain further or if they would like to
8 talk to me offline, that is fine. The bottom-line --

9 THE COURT: I am going to let you-all talk about
10 this offline.

11 MR. WINDOM: Thank you, Your Honor.

12 THE COURT: Because I think -- what I am
13 understanding from Twitter is that -- I am not a Twitter
14 user; most judges are not.

15 The connector notifications tab -- I am not
16 exactly sure what that is. But I do understand lists of
17 Twitter used who have favorited or re-tweeted tweets posted
18 by the account.

19 As I understand what Twitter is saying, that is
20 just a mass of data that is not segregated or segregable by
21 date frame -- by a time frame. And so I think that they are
22 having trouble figuring out how to do that.

23 And then, the last part of this is: All tweets
24 that include the user name associated with the account.
25 That could be a lot of data. So I think you need to talk to

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1 them about how to refine that. Okay.

2 MR. HOLTZBLATT: Thank you, Your Honor.

3 THE COURT: C, all contacts and related sync
4 information, produced?

5 MR. HOLTZBLATT: Yes.

6 THE COURT: Okay. All associated logs and
7 metadata, produced?

8 MR. HOLTZBLATT: Yes.

9 THE COURT: 4, for the record, reads: All other
10 content records and other information relating to the use of
11 the subject account including but not limited to: A, All
12 data and information associated with the profile page
13 including photographs, bios, and profile backgrounds and
14 themes.

15 Has that been produced?

16 MR. HOLTZBLATT: Yes.

17 THE COURT: B, multimedia uploaded to or otherwise
18 associated with the subject account.

19 Has that been produced?

20 MR. HOLTZBLATT: With one exception, yes.

21 The one exception is that there is tweet media
22 which are associated with the tweets. And so in the
23 January 11th through 12th repository that we are trimming --
24 that requires the trimming -- that one of the things that
25 has to be trimmed down to includes the tweet media. Other

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1 than that, we have produced for this category.

2 THE COURT: Okay. C, all records of searches
3 performed by the subject account from October 20th to
4 January 20, 2021.

5 Has that been produced, Mr. Holtzblatt?

6 MR. HOLTZBLATT: We have produced saved searches;
7 and we are in the process of producing actual search
8 queries, which can be produced today.

9 THE COURT: Today.

10 MR. HOLTZBLATT: It may have been included in the
11 earlier production, I don't know the answer to that. We are
12 producing additional information of actual search queries
13 today.

14 THE COURT: Okay. D, all location information
15 including all location data collected by any plug-ins,
16 widgets or the quote-unquote tweet with location service
17 from October 20th to January 20, 2021.

18 MR. HOLTZBLATT: Yes. We have produced what we
19 have. It is not something we normally have, so it may be a
20 small or null set. But to the extent we have it, we have
21 produced it.

22 THE COURT: Okay. E, information about the
23 subject account's use of Twitter's link service including
24 all longer website links that were shortened by the service,
25 all resulting shortened links or information about the

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1 number of times that link posted while the subject account
2 was clicked, which is a lot of information in there.

3 MR. HOLTZBLATT: Yes. We have not -- we have not
4 produced this information. We're struggling to understand
5 what would be responsive, and it's one we're continuing to
6 work on and would like to be able to continue to talk with
7 the government to make sure we understand what they
8 understand would fall in this category, so we're working on
9 it.

10 THE COURT: Can I just ask why is it that when
11 there are questions about the scope, and so on -- to be
12 quite honest, we are J.D.s, we are not IT professionals. So
13 it's oftentimes the case that, when we lawyers look at
14 language, we have to confer with IT to find out what is
15 feasible, what they have, how much longer it is, does it
16 exist, and so on.

17 So why is it on February 9th you-all are just
18 starting to have that conversation?

19 MR. HOLTZBLATT: Well, Your Honor --

20 THE COURT: When I do take, at face value,
21 Twitter's representation in connection with its motion
22 challenging the NDO, that it was perfectly prepared to
23 comply with this warrant?

24 MR. HOLTZBLATT: So I would like to explain that,
25 Your Honor.

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1 THE COURT: It's a puzzle from where I sit.

2 MR. HOLTZBLATT: I'm sorry, Your Honor.

3 In [REDACTED] communication with the government
4 prior to any filing in this case, one of the things that [REDACTED]
5 said to the government was: Once these issues, by which she
6 meant what was the subject of our -- what is still the
7 subject of our pending motion -- what was the subject of the
8 government's motion are resolved, which we understood to be
9 the big question -- there are some technical issues that we
10 will need to discuss with respect to this account. These
11 are the kinds of things [REDACTED] was referring to, about
12 the need to talk about technical information.

13 That's everything from: We have a standard
14 production tool, which is how -- for thousands of warrants
15 we produce information --

16 THE COURT: So [REDACTED] was putting the cart before the
17 horse. [REDACTED] should have been working on getting the warrant
18 production ready to go while she litigated whatever else
19 Twitter wanted to litigate.

20 Okay. Well, that's been clear from the process
21 here.

22 Okay. So let's break down E.

23 So information about use of Twitter's link
24 service, which is shortening longer website links. Does
25 Twitter maintain that information, when a Twitter user

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1 accesses and uses the link service?

2 You can tell me you don't know if you don't know.

3 MR. HOLTZBLATT: I think the safest thing for me
4 to say to Your Honor would be that I don't know the answer.
5 It is something that, I think, we are trying to produce
6 today; but it is also something that there was some
7 confusion about what it is. To the extent there remains
8 confusion, we will speak with the government and continue
9 speaking with the government until we have eliminated that
10 confusion.

11 And if it is available -- I think I am saying that
12 it is not hard to produce. We will endeavor to produce it
13 today. And if not, we will provide an update and explain
14 why we have not at the end of this afternoon, at four
15 o'clock.

16 THE COURT: This may be why the government keeps
17 insisting at each of these meetings that a personal
18 representative from Twitter be sitting at the table to
19 answer more technical questions. I am not sure why they
20 keep asking for a personal representative, but perhaps
21 that's one reason.

22 You are going to find that out. It will be
23 produced today if Twitter maintains it?

24 MR. HOLTZBLATT: It will be produced today if we
25 maintain it. And with the only caveat that if, for some

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1 reason, there is an engineering challenge that we cannot
2 overcome today, I will give an update to the government at
3 four o'clock and explain that.

4 THE COURT: Okay. And then -- so if the account
5 user used the link service. And then, the second part of
6 this is: All resulting shortened links. And then, the
7 third part of it is: The number of times that a link posted
8 by the subject account was clicked.

9 Do you understand what that means by "clicked"?

10 MR. HOLTZBLATT: I understand what it would mean
11 to click a link. I don't know if that is information that
12 Twitter maintains, the information about the clicking of
13 links that have been shortened through any link service. I
14 don't know the answer to that.

15 THE COURT: Because, certainly, the source link
16 might maintain the number of clicks on its link. But does
17 Twitter maintain information about those number of clicks
18 for links accessed via Twitter?

19 MR. HOLTZBLATT: I don't know. That is not
20 standard information that Twitter produces. I have some
21 doubt about whether this is information that Twitter
22 maintains, but I am not going to make a representation to
23 the Court when I don't know.

24 THE COURT: Mr. Windom.

25 Let's get clarity right now on what is being

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1 requested in 4E.

2 Just reading the English here, I think it reads --
3 but you can correct me if I'm wrong -- it's requesting three
4 things, the number of times the user of this account
5 accessed and used Twitter's link service which shortens
6 links -- so far so good?

7 MR. WINDOM: Yes, ma'am.

8 THE COURT: And then the second thing is what were
9 the shortened links.

10 MR. WINDOM: Yes, ma'am.

11 THE COURT: Is that right?

12 MR. WINDOM: Yes, ma'am.

13 THE COURT: And then, finally, any information
14 that Twitter has about the number of times that a link
15 posted by the subject account was actually clicked, which
16 is, basically, clicking on the tweet -- clicking on a link
17 embedded in a tweet.

18 Is it the government's information that this is
19 information that can be preserved, maintained, collected by
20 an electronic communications provider like Twitter.

21 MR. WINDOM: Yes, ma'am. And there is some
22 reference to this in the affidavit I will read briefly.
23 Twitter tracks --

24 THE COURT: In the affidavit?

25 MR. WINDOM: Ma'am?

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* * * * * **SEALED** * * * * *

1 THE COURT: In the affidavit?

2 MR. WINDOM: Yes, ma'am.

3 THE COURT: Which is currently sealed, and Twitter
4 hasn't seen it?

5 MR. WINDOM: This is a line that is a statement of
6 fact responsive to your question.

7 THE COURT: What a privilege to --

8 MR. WINDOM: "According to the government's
9 information, Twitter tracks how many times these shortened
10 links are clicked." Period, full stop.

11 THE COURT: Well, we'll find out if that
12 representation in the affidavit is correct, but that is
13 certainly information that the government has.

14 The government has been living and working and
15 obtaining information from Twitter since its existence,
16 probably, so they have experience before they put that in
17 their affidavit. Perhaps that can help counsel in
18 communicating with Twitter.

19 MR. HOLTZBLATT: Thank you, Your Honor. I
20 appreciate that.

21 THE COURT: Okay. All right. So E, 4 p.m. update
22 to the government today, Mr. Holtzblatt, about how much of
23 that you can produce, and when.

24 MR. HOLTZBLATT: Yes, Your Honor.

25 THE COURT: All right. I think that's it for what

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1 hasn't been produced, and a time frame for production.

2 It's clear to me that Twitter didn't comport or
3 comply with the deadline by 5 p.m. on February 7th and is
4 working hard to do so now. So that's good news.

5 When production is complete, I will expect the
6 government to let me know and what the government's
7 calculation is at that point because I am not keeping count
8 of the penalty, but I am sure the government will. I will
9 enter an order at that time for the amount. And, hopefully,
10 the government will confer with Twitter that everybody is
11 counting the days the same way and doing the math the same
12 way. But \$50,000 a day is a pretty big -- easy to calculate
13 round number even for us J.D.s. Hopefully, this production
14 will get wrapped up promptly.

15 Is there anything further today, Mr. Windom?

16 MR. WINDOM: No, ma'am. Thank you, Your Honor.

17 THE COURT: Anything further from Twitter?

18 MR. HOLTZBLATT: No, Your Honor.

19 THE COURT: All right. Hopefully, I won't see you
20 all again. You will be able to work this out.

21 I will just wait for your submissions on Twitter's
22 motion, and then we'll proceed from there. As I said, I was
23 hoping that the hearing we had on Tuesday pretty much covers
24 most of the issues that I might be concerned about with both
25 motions that were pending in front of me. But, as I said,

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1 if something comes up in the briefing where I think I
2 need -- another hearing is necessary on Twitter's motion,
3 we'll hold it then.

4 All right. If there is nothing else, you are
5 excused.

6 MR. HOLTZBLATT: Thank you, Your Honor.

7 MR. WINDOM: Thank you, Your Honor.

8 (Whereupon, the proceeding concludes, 12:15 p.m.)

9 * * * * *

10 **CERTIFICATE**

11
12 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby
13 certify that the foregoing constitutes a true and accurate
14 transcript of my stenographic notes, and is a full, true,
15 and complete transcript of the proceedings to the best of my
16 ability.

17 This certificate shall be considered null and void
18 if the transcript is disassembled and/or photocopied in any
19 manner by any party without authorization of the signatory
20 below.

21 Dated this 11th day of February, 2023.

22 /s/ Elizabeth Saint-Loth, RPR, FCRR
23 Official Court Reporter

24
25