

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 16cr265 (LMB)
	)	
NICHOLAS YOUNG,	)	
	)	
Defendant.	)	
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**NON-PARTY YAHOO! INC.'S OPPOSITION TO DEFENDANT NICHOLAS YOUNG'S  
MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY YAHOO! INC. SHOULD NOT  
BE HELD IN CONTEMPT**

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## **INTRODUCTION**

Perhaps no litigation rule is as basic as the requirement that an opposing party be given notice and an opportunity to respond to motions. Here, defendant Nicholas Young seeks to hold non-party Yahoo! Inc. (“Yahoo”) in contempt for failing to comply with an Order on a motion to compel, notwithstanding Young’s admitted failure to serve the underlying motion to compel on Yahoo.

Young otherwise seeks a contempt finding based on Yahoo’s purported failure to comply with a subpoena and an Order by this Court allowing Young to serve a subpoena. These too fail on their face. With respect to the subpoena, Yahoo cannot, as a practical matter, comply with the subpoena as issued. More importantly, the Stored Communications Act also prohibits Yahoo from disclosing communications pursuant to the subpoena. With respect to the Order allowing Young to serve a subpoena, Yahoo cannot be held in contempt for allegedly violating an order that merely authorized issuance of a subpoena.

Young’s scorched-earth litigation tactics against a non-party are harassing and entirely unwarranted. They are also based on false statements regarding Yahoo’s attempts to meet and confer with Young’s counsel to provide a means by which Young can obtain the sought-after emails while preserving Yahoo’s legal obligations under the Stored Communications Act and other laws. The Motion for Order to Show Cause should be denied, and the Court should issue sanctions against Young’s counsel for its misrepresentations to this Court and other conduct.

## **BACKGROUND**

In the interest of providing this Court with an accurate summary of what has transpired between Yahoo and Young’s counsel, Yahoo provides the following fulsome background of the matter.

On or about November 30, 2016, Young served a subpoena duces tecum (the “Subpoena”) on Yahoo, seeking a “\*reply\* email sent from freedomforlibya777@yahoo.com to mohamed\_2060@yahoo.com,” responding to a June 11, 2011 email from mohamed\_2060@yahoo.com (the “Mohamed Account”) to freedomforlibya777@yahoo.com (the “Libya Account”). (Declaration of Nicholas Lyon (“Lyon Decl.”), Ex. 1.)

On December 6, 2016, Yahoo objected to the Subpoena on the basis of the Stored Communications Act, which prohibits Yahoo from disclosing the contents of the email. (Declaration of Nicholas Lyon (“Lyon Decl.”), Ex. 2.)

On December 15, 2016, Yahoo’s in-house counsel Nicholas Lyon spoke with defendant’s counsel Nicholas Smith regarding the Subpoena. Mr. Lyon then sent an email to Mr. Smith, explaining why Yahoo could not legally or practically comply with the Subpoena. (Lyon Decl. ¶ 4, Ex. 3.) The email explained that Yahoo could not identify with any particularity the specific email sought by Mr. Smith. It further explained that the Yahoo account purportedly registered to Mr. Young (namely, the Libya Account) no longer existed. Without any obligation to do so, Yahoo suggested an alternative that could allow Young to obtain the email he sought. (Lyon Decl. Ex. 3) In particular, Yahoo suggested that Mr. Smith serve a new subpoena seeking the non-content headers for communications between the Libya Account and Mohamed Account. Obtaining such non-content headers could allow Mr. Smith to identify with accuracy which emails were actually being sought. Yahoo also provided Mr. Smith with a roadmap on other criteria needed to authorize Yahoo to produce the email, namely that Yahoo would need an affidavit from Mr. Young that he was the originator of the email and the owner of the Libya Account. (*Id.*) Yahoo further informed Mr. Smith that upon receipt of valid legal process, in accordance with Yahoo’s user notice policy, Yahoo would still be required to provide

notice to the affected Yahoo user prior to the disclosure of his or her data to provide the user with an opportunity to challenge the request for the user's data.<sup>1</sup> (*Id.*)

Mr. Smith replied by email on December 15, 2016, asking for further explanation as to why Yahoo could not identify the single email sought by Young. (Lyon Decl. Ex. 3.) Yahoo responded by email the same day, again explaining that Yahoo cannot identify which email (or any email) was “in response to” the June 11 email purportedly sent from the Mohamed Account to the Libya Account. (*Id.*) Yahoo further explained a way in which Mr. Smith could obtain the email he sought. (*Id.*)

On December 16, 2016 outside counsel for Yahoo, Anna Hsia, contacted Mr. Smith by phone. Ms. Hsia explained to Mr. Smith that Yahoo has no means of identifying which email was sent in “response” to the June 11 email from the Mohamed Account to the Libya Account. (Declaration of Anna Hsia (“Hsia Decl.”) ¶ 2.) Ms. Hsia further explained that Yahoo could not identify the responsive email, because there was no single email chain with a responsive email to the June 11 email. (*Id.*) Accordingly, any purported “response” would have occurred in a different email chain, rendering it impossible for Yahoo to identify with any particularity. Mr. Smith thanked Ms. Hsia for this explanation and indicated he understood why Yahoo could not identify the specific email he sought. (*Id.*) Ms. Hsia further explained to Mr. Smith that his client's purported Libya Account no longer existed, so any production of emails would need to be pulled from a third party's Yahoo account. (Hsia Decl. ¶ 3.) For Yahoo to make such a production, it would need to first ensure certain criteria are met to protect the privacy interests of the third party. (*Id.*) During the call, Mr. Smith

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<sup>1</sup> As Mr. Lyon explained in his email, Yahoo's standard policy is to provide its users with 15 days to challenge the request for the user's data. (Lyon Decl. Ex. 3.) As described further below, and as was subsequently made clear to Mr. Young, Yahoo—in light of the apparent time sensitivities in the underlying criminal matter—is willing to shorten its standard user notice policy to 7 days, or even forego notice altogether if so ordered by the Court. (*See* Declaration of Anna Hsia, Ex. 2.)

threatened to seek sanctions against Yahoo for not producing all emails from the Libya Account to the Mohamed Account, and Ms. Hsia explained that Yahoo can only produce emails in accordance with Yahoo's independent legal obligations. (Hsia Decl. ¶ 4.) Mr. Smith contended the Court had ordered Yahoo to comply with the Subpoena. Ms. Hsia asked Mr. Smith to send her a copy of that Order, as well as the underlying motion. (*Id.*)

On December 16, 2016, Mr. Smith emailed Ms. Hsia, attaching Young's Unopposed Motion for Issuance of Pretrial Subpoena Duces Tecum, and the Court's subsequent Order allowing Mr. Smith to issue a subpoena to Yahoo. (Hsia Decl. ¶ 5, Ex. 1.)

On Saturday, December 17, 2016, Ms. Hsia responded to Mr. Smith by email. (Hsia Decl. ¶ 6, Ex. 2.) She explained that the Order authorizing Mr. Smith to issue a subpoena was not sufficient to enable Yahoo to produce the emails, because the Order did not compel production, but only authorized issuance of a subpoena. Ms. Hsia again emphasized that, because Young's alleged Yahoo account no longer exists, all data requested would need to be exported from a different user's account. (*Id.*) As a result, Yahoo is required to take reasonable steps to protect the privacy interests of the Mohamed Account holder. Ms. Hsia then provided Mr. Smith with yet another way by which Mr. Smith could obtain the emails he sought. Specifically, Ms. Hsia stated Yahoo could produce the emails if Mr. Smith provided Yahoo with a proper affidavit from Mr. Young, and if Mr. Smith procured a "court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order." (Hsia Decl. ¶ 7, Ex. 2.) Without any obligation to do so, Ms. Hsia also informed Mr. Smith that if the 7-day notice period was problematic, he could request that the court order include a nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the Mohamed Account. (*Id.*)

Mr. Smith responded by email on Saturday, December 17, 2016, demanding that Yahoo produce all emails pursuant to the original subpoena. He threatened to seek sanctions against Yahoo if Yahoo did not comply with his demand. (Hsia Decl. ¶ 8, Ex. 3.)

On December 19, 2016, Mr. Smith emailed Ms. Hsia, asking to further meet and confer. (Hsia Decl. ¶ 9, Ex. 4.) Ms. Hsia was not in the office, but provided Mr. Smith with her mobile number to further confer. (Hsia Decl. ¶ 9, Ex. 5.) During the December 19 call that followed, Ms. Hsia again explained to Mr. Smith that Yahoo is trying to work with him, but given the fact that his client's purported Yahoo account does not exist anymore, Yahoo is required to take steps to protect the privacy interests of the Mohamed account holder. (Hsia Decl. ¶ 9.) Ms. Hsia reiterated that Yahoo could produce the emails pursuant to a court order in line with Ms. Hsia's email of December 17, 2016. (*Id.*) Mr. Smith asked if Ms. Hsia would oppose a motion to compel. (*Id.*) Ms. Hsia explained that Yahoo would not oppose, provided the motion to compel was consistent with Ms. Hsia's December 17, 2016 email, and provided that Young did not seek sanctions against Yahoo. (*Id.*) Ms. Hsia further informed Mr. Smith that if Young sought sanctions, Yahoo would likewise seek sanctions against Young for its conduct against a non-party. (Hsia Decl. ¶ 9.) Ms. Hsia further explained her confusion as to why Mr. Smith was threatening sanctions, as the process of seeking sanctions would likely take longer than Mr. Smith simply following the path forward offered by Yahoo. (*Id.*) In response, Mr. Smith stated that he would email Ms. Hsia the motion to compel "later today." (*Id.*)

On December 23, 2016, Mr. Smith emailed Ms. Hsia the Court's Order Granting Unopposed Motion to Compel Compliance with Pretrial Subpoena Duces Tecum. (Hsia Decl. ¶ 10, Ex. 6.) Ms. Hsia responded by email, noting that Mr. Smith had failed to serve a copy of the motion to compel in accordance with his representation on the December 19 telephone call. (Hsia Decl. ¶ 11, Ex. 7.) Ms. Hsia further explained that "Yahoo did not and cannot stipulate to a motion without having reviewed



the motion before filing.” (*Id.*) Ms. Hsia asked Mr. Smith to send the original motion and explained that until Yahoo can review the motion to compel and confirm it is consistent with the parties’ agreement, Yahoo reserved its rights to object to the motion and ensuing Order. (*Id.*)

On Friday, December 23 at approximately 3:26pm, Mr. Smith emailed Ms. Hsia, but failed to provide a copy of the motion to compel. (Hsia Decl. ¶ 12, Ex. 8.) On Monday, December 26 (a federal holiday), Mr. Smith emailed Ms. Hsia with the motion to compel. (Hsia Decl. ¶ 14, Ex. 9.) Ms. Hsia responded the same day, informing Mr. Smith that Yahoo would review the motion to compel and determine whether it is consistent with the parties’ agreement. (Hsia Decl. ¶ 15, Ex. 10.) Ms. Hsia further explained that Mr. Smith was entirely inaccurate in claiming that Yahoo agreed not to oppose a motion to compel, sight unseen. In particular, Ms. Hsia explained:

“It is, however, entirely incorrect that Yahoo agreed not to oppose a motion to compel, sight unseen. To be clear, I specifically informed you that Yahoo would not oppose a motion, provided the motion to compel was consistent with our agreement, and provided you did not seek the sanctions you threatened. I also specifically informed you that if you sought sanctions against Yahoo, Yahoo would oppose such motion and seek sanctions for the time and expense incurred in opposing such a motion. In response, you informed me that you expected to email me your motion to compel “later today.” That motion never came. And in any event, it is inappropriate and unprofessional for you to represent to a court that Yahoo did not oppose a motion, without you ever having served said motion upon Yahoo.”

(*Id.*)

Ms. Hsia further explained that the Order Mr. Smith obtained was not consistent with Ms. Hsia’s December 17 email, because it did not require “production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.” (Hsia Decl. ¶ 16, Ex. 10.)

Despite this complete failure to comply with basic notice requirements, Ms. Hsia asked Mr. Smith to provide Yahoo with the Young affidavit. Ms. Hsia explained that Yahoo would review the motion to compel and Order and determine whether they enable Yahoo to produce documents after the 7-day notice period to the Mohamed Account holder. Yahoo further reserved its rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition. (Hsia Decl. ¶ 17, Ex. 10.)

Within two hours after Ms. Hsia sent this email, Young filed his motion for order to show cause. (Hsia Decl. ¶ 18.)<sup>2</sup>

## ARGUMENT

### **I. The Motion Should Be Denied Because the Stored Communications Act Does Not Compel Yahoo to Disclose the Emails Requested by Young**

Young contends that his Motion should be granted for Yahoo's failure to comply with a subpoena and two court orders. But his argument relies on a misreading of the Stored Communication Act and a complete failure by Young to comply with basic rules of procedure.

#### **A. Yahoo Cannot Comply with the Subpoena as Issued.**

Young falsely contends that Yahoo should be held in contempt for failure to comply with a subpoena that sought the following:

On 6/11/2011, at 12:56:02, 'mohamed\_2060@yahoo.com' sent an email to 'freedomforlibya777@yahoo.com.' Produce the \*reply\* email sent from freedomforlibya777@yahoo.com to mohamed\_2060@yahoo.com in response to that email.

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<sup>2</sup> For the Court's convenience, a full history of the email correspondence between Mr. Smith and Ms. Hsia (without attachments) is attached to the Hsia Declaration as Exhibits 5 and 11, and all email correspondence between Mr. Smith and Mr. Lyon (without attachments) is attached to the Lyon Declaration as Exhibit 3. Such correspondence was omitted from Young's moving papers. The email correspondence also demonstrates Yahoo's good-faith attempts to meet and confer with Mr. Smith, notwithstanding Mr. Smith's complaints about an inability to speak with Yahoo's outside counsel during the Christmas holiday. (See Hsia Decl. ¶ 13.)

No contempt finding is warranted. First, and as explained at length to Young’s counsel, the Stored Communications Act (“SCA”), 18 U.S.C. § 2701, *et seq.*, prohibits production pursuant to the Subpoena. The SCA provides for both compulsory disclosure and permissive disclosure, depending on the circumstances. *See* 18 U.S.C. § 2702 (“*Voluntary* disclosure of customer communications or records”); 18 U.S.C. § 2703 (“*Required* disclosure of customer communications or records”). Under the compulsory prong, communications providers like Yahoo may not disclose the content of email communications, unless one of the specifically enumerated exceptions is satisfied. Significantly, none of those exceptions allow disclosure in response to legal process issued by a non-governmental entity like Nicholas Young. *See, e.g., Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 731 (9th Cir. 2011) (affirming lower court’s decision to deny a request to order production of emails to a non-governmental entity because the emails were protected from disclosure by the SCA); *U.S. v. Amawi*, 552 F. Supp. 2d 679, 680 (N.D. Oh. 2008) (rejecting defendant’s motion under 18 U.S.C. § 2703(d) to compel disclosure of electronic communications because “the Office of the Federal Public Defender is not a ‘governmental entity’ within the meaning of § 2703”); *cf. In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp. 2d 606, 611 (E.D. Va. 2008) (holding that the “clear and unambiguous language” of the SCA prohibited AOL from divulging communications content because the SCA “does not include an exception for the disclosure of electronic communications pursuant to civil discovery subpoenas.”).

Young recognizes this, relying instead on the “communication-originator and – addressee exceptions” to the SCA. Motion at 2.<sup>3</sup> Critically, however, the originator exception to the SCA

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<sup>3</sup> Significantly, because the Subpoena does not indicate that Mr. Young was the originator of the emails sought from Yahoo (much less contain an affidavit attesting to this purported fact), Yahoo had no reason to believe that Section 2702’s originator exception even applied.

authorizes *permissive* disclosure—it is not compulsory. 18 U.S.C. § 2702(b) (“A provider described in subsection (a) *may* divulge the contents of a communication”) (emphasis added). A plain reading of the SCA thus reveals that Yahoo is not legally obligated to produce email content pursuant to the Subpoena. Without any legal obligation to do so, Yahoo has instead attempted to provide Young’s counsel with several options to obtain the emails he seeks. (*E.g.*, Lyon Decl. Ex. 3; Hsia Decl. ¶¶ 7, 9, Ex. 2.) Rather than following any of these roadmaps, Young filed the instant Motion, which appears designed to unnecessarily harass and burden a non-party.

Secondly, as explained by Yahoo to Young’s counsel at length, Yahoo cannot comply with the Subpoena as drafted, because Yahoo cannot identify with particularity the specific email sought by the Subpoena. Indeed, counsel for Young admitted he understood why Yahoo could not comply with the Subpoena as issued (Hsia Decl. ¶ 2), rendering this argument frivolous and meritless.

Because (1) the Stored Communications Act does not authorize nor require production of the requested emails and (2) Yahoo cannot practically comply with the Subpoena, Young’s Motion should be denied with respect to alleged contempt of the Subpoena.

**B. The November 23, 2016 Order Does Not Require Yahoo to Comply with the Subpoena.**

Young next contends that this Court’s November 23, 2016 Order requires Yahoo to comply with the Subpoena. He is wrong. First, as described above, the SCA prohibits Yahoo from disclosing the contents of email communications in response to legal process—and even court orders—requested by a non-governmental entity. *See, e.g., Suzlon Energy*, 671 F.3d at 731 (affirming lower court’s decision to deny a request to order production of emails to a non-governmental entity because the emails were protected from disclosure by the SCA). Second, as explained to Young’s counsel, the November 23 Order does not compel Yahoo to comply with the Subpoena. On its face, it merely authorizes Young to serve a subpoena upon Yahoo. The Order was not issued pursuant to any motion

practice in which Yahoo was given notice and an opportunity to respond. Because the November 23 Order does not compel Yahoo's compliance with the Subpoena, a contempt finding is unwarranted.

C. The Court Should Not Enforce the December 22, 2016 Order, Because Defendant Never Served Yahoo with the Motion Underlying the Order.

Young finally contends that Yahoo should be held in contempt for not complying with this Court's December 22, 2016 Order. Critically, however, Young never served Yahoo with the underlying motion to compel, and misrepresented to this Court that Yahoo had agreed not to oppose the motion. It goes without saying that Yahoo cannot agree not to oppose a motion, sight unseen. Indeed, Yahoo's counsel specifically informed Young's counsel that Yahoo would only agree not to oppose a motion to compel, provided certain conditions were met. (Hsia Decl. ¶ 9.) And in response, Young's counsel informed Yahoo's counsel that he would send Yahoo the motion to compel for Yahoo's review. (*Id.*) Local Criminal Rule 47(F) imposes the unobjectionable requirement that a party moving for relief serve the motion upon interested parties. *See also* Fed. R. Crim. P. 49 (requiring service of motions).

Here, it is undisputed that Young did not serve the motion to compel upon Yahoo. At no point did Yahoo waive service of the underlying motion to compel, nor did Yahoo agree to not oppose such a motion without first reviewing the motion.<sup>4</sup> Accordingly, Young's motion should be denied.

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<sup>4</sup> Mr. Smith's claim that Yahoo's counsel agreed not to oppose a motion, sight unseen, is unequivocally false. Indeed, the Court should consider imposing sanctions for the false statements made by Mr. Smith in his declaration.

**II. Without Any Legal Obligation to Do So, and Consistent with Yahoo's Position the Entire Time, Yahoo Remains Willing to Provide the Emails to Young, Provided Certain Criteria Are Met**

Despite the unwarranted and scorched-earth litigation tactics levied by Young against a non-party, Yahoo remains willing to provide the emails to Young, provided Young first meets certain criteria. As set forth in meet and confer correspondence from Yahoo's counsel, Yahoo can provide all emails from the Libya Account to the Mohamed Account in the specified time period<sup>5</sup> provided (1) it receives an affidavit from Mr. Young establishing that Mr. Young created the freedomforlibya777@yahoo.com account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo; and (2) Yahoo receives an Order from this Court requiring production of the aforementioned emails from Yahoo only after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.

**III. The Court Should Impose Sanctions Against Young**

Courts may impose sanctions in criminal matters where defense counsel "files a motion solely for the purpose of delay which he knows is totally frivolous and without merit." 18 U.S.C. § 3162(b).<sup>6</sup> Federal law also authorizes courts to "punish by fine or imprisonment, or both, at its discretion" where there is "[m]isbehavior of any person in its presence or so near thereto as to obstruct the administration

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<sup>5</sup> Furthermore, while Young appears to only seek emails sent from the Libya Account to the Mohamed Account in June 2011, Yahoo is—and has made clear to counsel for Young that it is—willing to provide *all* emails sent from the Libya Account to the Mohamed Account (i.e., regardless of time period).

<sup>6</sup> For court-appointed attorneys like the ones representing Mr. Young, the Court may (1) reduce the amount of compensation that would otherwise have been paid to such counsel; (2) deny such counsel the right to practice before the court considering such case for a period of not to exceed ninety days; or (3) file a report with an appropriate disciplinary committee.

of justice.” 18 U.S.C. § 401; *see also* Fed. R. Crim. P. 42 (authorizing sanctions for criminal contempt).

Among other things, counsel for Young has (1) failed to comply with the Federal Rules of Criminal Procedure and this Court’s Local Rules by failing to serve Yahoo with the underlying motion to compel; (2) misrepresented to this Court that Yahoo did not oppose the underlying motion to compel; (3) filed a motion for order to show cause based on materially false statements and omissions; and (4) violated professional rules of conduct in making baseless accusations against another attorney.<sup>7</sup> As set forth above, Yahoo has—without any legal obligation to do so—consistently tried to work with Young’s counsel in proffering ways in which Young could obtain the emails he sought while respecting Yahoo’s independent legal obligations. Young’s motion is a meritless waste of this Court’s resources, and sanctions are warranted.

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<sup>7</sup> In Footnote 2 of Defendant’s Motion, Defendant notes that Yahoo’s in-house counsel, Mr. Lyon, previously worked for the United States government during the period of the government’s investigation into Defendant’s activities, implying that Mr. Lyon is somehow in cahoots with the government now that he works for Yahoo. ECF 48 at 2 n.2. This assertion of an utterly irrelevant fact—Mr. Lyon’s previous employment—and the implication that flows therefrom, violates several rules of professional conduct. Both New York and Virginia (where Defendant’s counsel are barred) prohibit attorneys from “assert[ing] or controvert[ing] an issue [in a proceeding], unless there is a basis for doing so that is not frivolous . . . .” N.Y. R. Prof. Conduct 3.1(a); Va. R. Prof. Conduct 3.1. An action or statement is “frivolous” if it “serves merely to harass or maliciously injure another.” N.Y. R. Prof. Conduct 3.1(b)(2). *Accord* Va. R. Prof. Conduct 3.1, Comment 2. Footnote 2 also violates Rules 3.4 of both New York’s and Virginia’s rules. *See* N.Y. R. Prof. Conduct 3.4(d)(1); Va. R. Prof. Conduct 3.4(f) (before a tribunal, a lawyer shall not “state or allude to any matter that the lawyer does not reasonably believe is relevant . . . .”). Defendant’s assertion of Mr. Lyon’s employment history serves no purpose here other than to harass or injure Mr. Lyon before this tribunal. Defendant offers no reason to believe that Mr. Lyon was in any way involved in the investigation in this case or that his actions on behalf of Yahoo in this matter have anything to do with his previous employment. Rather, Defendant boldly states an irrelevant fact hoping it will tar in-house counsel for a non-party in the eyes of the Court. *See* N.Y. R. Prof. Conduct 4.4(a); Va. R. Prof. Conduct 4.4 (“In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass or harm a third person . . . .”).

## **CONCLUSION**

For the foregoing reasons, non-party Yahoo respectfully requests that the Court deny Young's motion for order to show cause, and impose sanctions against Young for unduly harassing Yahoo with frivolous motions and making material misrepresentations to this Court.

DATED: January 5, 2017

**ZWILLGEN PLLC**

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**Attorneys for Non-Party**

**Yahoo! Inc.**



### **CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of January, 2017, I will cause the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

David Benjamin Smith  
Smith & Zimmerman PLLC  
108 North Alfred Street  
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(703) 548-8911  
Fax: (703) 548-8935  
Email: [dbs@davidbsmithpllc.com](mailto:dbs@davidbsmithpllc.com)

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John T. Gibbs  
US Attorney's Office (Alexandria-NA)  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Email: [john.gibbs@usdoj.gov](mailto:john.gibbs@usdoj.gov)

And I hereby certify that I will cause the document to be mailed by U.S. mail to the following non-filing user:

Nicholas D. Smith  
7 East 20th Street  
New York, NY 10003  
Phone: (917) 722-1096  
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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 16cr265 (LMB)
	)	
NICHOLAS YOUNG,	)	
	)	
Defendant.	)	
<hr style="width: 45%; margin-left: 0;"/>	)	

**DECLARATION OF ANNA HSIA IN SUPPORT OF YAHOO! INC.'S OPPOSITION TO  
DEFENDANT NICHOLAS YOUNG'S MOTION FOR AN ORDER TO SHOW CAUSE AS TO  
WHY YAHOO! INC. SHOULD NOT BE HELD IN CONTEMPT**

I, Anna Hsia, declare as follows:

1. I am an attorney at ZwillGen Law, LLP, outside counsel for non-party Yahoo! Inc. (“Yahoo”). I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration. If called to testify, I could and would testify competently thereto.

2. On December 16, 2016, I contacted defense counsel Nicholas Smith (“Mr. Smith”) by telephone. During that call, I explained to Mr. Smith that Yahoo has no means of identifying the email sought by his subpoena served upon Yahoo on or about November 30, 2016 (the “Subpoena”). I further explained that Yahoo could not identify which email was sent in “response” to the June 11 email from the mohamed\_2060@yahoo.com (the “Mohamed Account”) to freedomforlibya777@yahoo.com (the “Libya Account”), because there was no single email chain with a responsive email to the June 11 email. Because there was no single email chain, any purported “response” would have occurred in a different email chain, rendering it impossible for Yahoo to identify with any particularity. Mr. Smith thanked me to this explanation, and he stated he understood why Yahoo could not identify the specific email sought by the Subpoena.

3. During the same December 16, 2016 phone call, I further explained to Mr. Smith that his client’s purported Libya Account no longer existed, so Yahoo could only produce emails to Mr. Smith by extracting them from a third party’s Yahoo account. I informed Mr. Smith that for Yahoo to make such a production, Yahoo would need to ensure certain criteria are met to protect the privacy interests of the third party.

4. On multiple occasions during this December 16, 2016 call, Mr. Smith threatened to seek sanctions against Yahoo for not producing all emails from the Libya Account to the Mohamed Account. I explained that Yahoo can only produce emails in accordance with Yahoo’s legal obligations. Mr. Smith indicated that the Court had issued an order to Yahoo to compel compliance

with the Subpoena. I asked Mr. Smith to send me a copy of that Order, as well as the underlying motion.

5. On December 16, 2016, Mr. Smith emailed me, attaching Nicholas Young's Unopposed Motion for Issuance of Pretrial Subpoena Duces Tecum, and the Court's subsequent Order allowing Mr. Smith to issue a subpoena to Yahoo. A true and correct copy of the body of that email is attached hereto as Exhibit 1.

6. On Saturday, December 17, 2016, I responded to Mr. Smith by email. A true and correct copy of that email is attached hereto as Exhibit 2. I explained that the Order authorizing Mr. Smith to issue a subpoena was not sufficient to enable Yahoo to produce the emails, because the Order did not compel production, but only authorized issuance of a subpoena. I again emphasized that, because Young's alleged Libya Account no longer exists, all data requested would need to be exported the Mohamed Account holder's account. And in such instances, Yahoo is required to take reasonable steps to protect the privacy interests of the Mohamed Account holder.

7. In that same December 17, 2016 email, I provided Mr. Smith with yet another way by which he could obtain the emails he sought. I informed Mr. Smith that Yahoo could produce the emails after expiration of a 7-day notice period to the Mohamed Account holder if Mr. Smith provided Yahoo with (1) an affidavit from Mr. Young establishing that Mr. Young created the freedomforlibya777@yahoo.com account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo and (2) a court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order. I further informed Mr. Smith that if the 7-day notice period was problematic, Mr. Smith could request that the court order include a

nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the Mohamed Account.

8. On Saturday, December 17, 2016, Mr. Smith responded by email, demanding that Yahoo produce all emails pursuant to the original subpoena. Mr. Smith further threatened to seek sanctions against Yahoo if Yahoo did not comply with his demands. A true and correct copy of this email is attached hereto as Exhibit 3.

9. On Monday, December 19, 2016, Mr. Smith emailed me, asking to further meet and confer. A true and correct copy of that email is attached hereto as Exhibit 4. I was not in the office, so I provided Mr. Smith with my mobile phone number to further confer. A true and correct copy of that email (with my mobile number redacted) is attached hereto as Exhibit 5. Mr. Smith called me that afternoon, and I again explained that while Yahoo is trying to work with him, because Mr. Young's purported Yahoo account does not exist anymore, Yahoo is required to take steps to protect the privacy interests of the Mohamed Account holder. I again explained that Yahoo could produce the emails pursuant to a court order in line with my email of December 17, 2016. Mr. Smith asked me if Yahoo would oppose a motion to compel to obtain that court order. I explained that Yahoo would not oppose, provided the motion to compel was consistent with my December 17, 2016 email and provided Young did not seek the sanctions against Yahoo. I further informed Mr. Smith that if Young sought sanctions, Yahoo would likewise seek sanctions against Young for his conduct against a non-party. I also expressed my confusion as to why Mr. Smith was threatening sanctions. Mr. Smith had indicated that receipt of the emails was urgent, and Yahoo had provided him a way to obtain to obtain such emails. I informed Mr. Smith that it did not make sense that he would seek sanctions, as the process of seeking sanctions would likely take longer than Mr. Smith simply following the path

forward offered by Yahoo. In response, Mr. Smith stated that he would email me his client's motion to compel "later today."

10. On Friday, December 23, 2016, Mr. Smith emailed me the Court's Order Granting Unopposed Motion to Compel Compliance with Pretrial Subpoena Duces Tecum. A true and correct copy of the body of that email is attached hereto as Exhibit 6.

11. On Friday, December 23, 2016, I responded to Mr. Smith by email, noting that Mr. Smith had never served a copy of the motion to compel in accordance with his representation on the December 19 telephone call. In that email, I explained that "Yahoo did not and cannot stipulate to a motion without having reviewed the motion before filing." I asked Mr. Smith to send the original motion, and I explained that until Yahoo can review the motion to compel and confirm it is consistent with the parties' agreement, Yahoo reserved its rights to object to the motion and ensuing Order. A true and correct copy of this email is attached hereto as Exhibit 7.

12. On Friday, December 23, 2016, at approximately 3:26 p.m., Mr. Smith emailed me, but did not provide a copy of the motion to compel. A true and correct copy of this email is attached hereto as Exhibit 8.

13. Mr. Smith asserts in his declaration that I did not answer certain phone calls he made during times in which I was out of the office for the Christmas holiday. Though I was not in the office on the afternoon of Friday, December 23 or on Monday, December 26, I responded to Mr. Smith via email.

14. On Monday, December 26, 2016 (a federal holiday), Mr. Smith emailed me the motion to compel. A true and correct copy of the body of that email is attached hereto as Exhibit 9.

15. I responded by email the same day, informing Mr. Smith that Yahoo would review the motion to compel and determine whether it is consistent with the parties' agreement. A true and

correct copy of that email is attached hereto as Exhibit 10. I further explained that Mr. Smith was entirely inaccurate in claiming that Yahoo agreed not to oppose a motion to compel, sight unseen. Indeed, I reminded Mr. Smith that during our December 19, 2016 phone call, he informed me that he expected to email me Young's motion to compel "later today." I further informed Mr. Smith that his representations to the Court that Yahoo did not oppose the motion to compel were inappropriate and unprofessional.

16. In that December 26, 2016 email, I also explained that the Order Mr. Smith obtained was not consistent with my December 17, 2016 email, because it did not require "production of the aforementioned emails from Yahoo *after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.*"

17. In the same December 26, 2016 email, I asked Mr. Smith to provide Yahoo with the Young affidavit. I explained that Yahoo would review the motion to compel and Order and determine whether they enable Yahoo to produce documents after the 7-day notice period to the Mohamed Account holder. I further reserved Yahoo's rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition.

18. Within two hours after I sent the email on Monday, December 26, 2016, Mr. Smith filed a motion for order to show cause.

19. For the Court's convenience, the full history of emails between Mr. Smith and me (excluding attachments), which was omitted from Mr. Smith's declaration, is attached hereto as Exhibits 5 and 11.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of January 2017 in San Francisco, California.

By: 

Anna Hsia



### CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2017, I will cause the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

David Benjamin Smith  
Smith & Zimmerman PLLC  
108 North Alfred Street  
Alexandria, VA 22314  
(703) 548-8911  
Fax: (703) 548-8935  
Email: [dbs@davidbsmithpllc.com](mailto:dbs@davidbsmithpllc.com)

Gordon D. Kromberg  
United States Attorney's Office  
2100 Jamieson Ave  
Alexandria, VA 22314  
(703)299-3700  
Email: [gordon.kromberg@usdoj.gov](mailto:gordon.kromberg@usdoj.gov)

John T. Gibbs  
US Attorney's Office (Alexandria-NA)  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Email: [john.gibbs@usdoj.gov](mailto:john.gibbs@usdoj.gov)

And I hereby certify that I will cause the document to be mailed by U.S. mail to the following non-filing user:

Nicholas D. Smith  
7 East 20th Street  
New York, NY 10003  
Phone: (917) 722-1096  
[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)

### ZWILLGEN PLLC

By: /s/ Jonathan S. Frankel

Jonathan S. Frankel (VA Bar No. 40974)  
1900 M Street, NW, Suite 250  
Washington, DC 20036  
Phone (202) 296-3585  
Fax: (202) 706-5298  
[jon@zwillgen.com](mailto:jon@zwillgen.com)  
**Attorneys for Non-Party**  
**Yahoo! Inc.**

## EXHIBIT 1

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]

**Sent:** Friday, December 16, 2016 12:29 PM

**To:** Anna Hsia <Anna@zwillgen.com>

**Subject:** US v Nicholas Young, 16cr265

Hi Anna -- thanks for your call. Attached are Nicholas Young's unopposed motion for the relevant communications and the court's order. At your earliest convenience, please let me know if Yahoo will insist on another subpoena, instead of sending all of Mr. Young's own June 2011 emails, and if so why. (Fwiw, I believe the total email count for that set is something like 4....not terribly huge in absolute terms and relative to the face of the subpoena.)

In a conference call yesterday the prosecutor said he would consider sending additional search warrants and/or pressing for compliance with existing ones in the event we cannot reach agreement on this Rule 17 subpoena. All things considered, to us, it just seems so much easier to produce a small set of Mr. Young's own emails.

Thank you,  
nick

## EXHIBIT 2

**From:** Anna Hsia  
**Sent:** Saturday, December 17, 2016 2:11 PM  
**To:** 'nds@davidbsmithpllc.com' <nds@davidbsmithpllc.com>  
**Cc:** Aaron Altschuler <aaron@zwillgen.com>  
**Subject:** RE: US v Nicholas Young, 16cr265

Hi Nick,

Thank you for your email. Unfortunately, the court order you sent does not compel production of documents by Yahoo; it only authorizes the issuance of a subpoena. Yahoo therefore cannot rely on such a court order to produce documents.

As we have explained, part of the issue here is that Mr. Young's alleged Yahoo account no longer exists, so all data requested needs to be exported from a different user's account. Because of these unique circumstances, including the separate privacy interests of the user from whose account the emails would be produced, Yahoo needs to take reasonable steps to ensure that Mr. Young is indeed the owner of the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and the originator of the relevant emails.

We understand that you are no longer requesting that Yahoo identify a single responsive email for production (as Yahoo cannot comply with such a request). Rather, you are now requesting Yahoo produce all emails from the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account to the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in or after June 2011. Given the unique circumstances described herein, and in conversations between you and Yahoo's legal counsel, we are proposing the following solution, which will allow Yahoo to comply with its obligations while providing you with the requested emails.

Yahoo can produce the emails (after the 7-day notice period described below) if you provide Yahoo with the following:

1. An affidavit from Mr. Young establishing that Mr. Young created the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo.
2. A court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.

To the extent the 7-day notice period is problematic, you can alternatively request that the court order include a nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account.

Yahoo otherwise reserves all rights and objections. Please let me know if you have any questions or would like to discuss.

Best,  
Anna



Anna Hsia | Counsel

235 Montgomery Street, Suite 425  
San Francisco, CA 94104  
415 590 2341

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [<mailto:nds@davidbsmithpllc.com>]

**Sent:** Friday, December 16, 2016 12:29 PM

**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** US v Nicholas Young, 16cr265

Hi Anna -- thanks for your call. Attached are Nicholas Young's unopposed motion for the relevant communications and the court's order. At your earliest convenience, please let me know if Yahoo will insist on another subpoena, instead of sending all of Mr. Young's own June 2011 emails, and if so why. (Fwiw, I believe the total email count for that set is something like 4....not terribly huge in absolute terms and relative to the face of the subpoena.)

In a conference call yesterday the prosecutor said he would consider sending additional search warrants and/or pressing for compliance with existing ones in the event we cannot reach agreement on this Rule 17 subpoena. All things considered, to us, it just seems so much easier to produce a small set of Mr. Young's own emails.

Thank you,  
nick

## EXHIBIT 3

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]

**Sent:** Saturday, December 17, 2016 5:37 PM

**To:** Anna Hsia <Anna@zwillgen.com>

**Subject:** Re: US v Nicholas Young, 16cr265

Anna -- Thank you for your quick & thorough response. However, we are still confused by Yahoo's position. You write that the court order "does not compel production of documents by Yahoo." That is correct: as with any other litigation subpoena, the subpoena *itself* compels Yahoo's production of documents. See Fed. R. Crim P. 17.

Here, the court issued the order for a different reason. Ordinarily, Rule 17 subpoenas coincide with the beginning of trial -- and are issued by the attorneys without court approval. As seen in the motion I emailed to you, to secure a *pretrial* subpoena duces tecum, a defendant must obtain court approval under the Nixon standard. Thus, when the court granted Mr. Young's Rule 17 motion, it necessarily found that the information sought in the subpoena is relevant to the case, not obtainable from any other source, and that it should be produced before trial in order to protect the trial rights of the criminal defendant.

So we do not understand the legal basis for Yahoo's request for a court order -- or even what that order would non-redundantly direct, given that the subpoena itself compels compliance. If burdened with this dispute, the court will almost certainly inform the parties that the subpoena itself compels production of the information outlined in the Rule 17 motion.

It is disconcerting to us that we are now a week past the subpoena return date and explaining the legal effect of a litigation subpoena. As explained during our call last week, every day that passes without subpoena compliance prejudices Mr. Young, as he needs his own emails to advance his position in plea bargaining.

Please confirm by Tuesday morning that Yahoo will produce Mr. Young's June 2011 emails to the mohamed\_2060 account, upon receipt of Mr. Young's affidavit, and after the notice period. We will otherwise move for an order to show cause and possibly seek sanctions for our time preparing a motion.

I'm available to speak on Monday.

Best, Nick

On Sat, Dec 17, 2016 at 5:10 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

Hi Nick,

Thank you for your email. Unfortunately, the court order you sent does not compel production of documents by Yahoo; it only authorizes the issuance of a subpoena. Yahoo therefore cannot rely on such a court order to produce documents.



As we have explained, part of the issue here is that Mr. Young's alleged Yahoo account no longer exists, so all data requested needs to be exported from a different user's account. Because of these unique circumstances, including the separate privacy interests of the user from whose account the emails would be produced, Yahoo needs to take reasonable steps to ensure that Mr. Young is indeed the owner of the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and the originator of the relevant emails.

We understand that you are no longer requesting that Yahoo identify a single responsive email for production (as Yahoo cannot comply with such a request). Rather, you are now requesting Yahoo produce all emails from the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account to the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in or after June 2011. Given the unique circumstances described herein, and in conversations between you and Yahoo's legal counsel, we are proposing the following solution, which will allow Yahoo to comply with its obligations while providing you with the requested emails.

Yahoo can produce the emails (after the 7-day notice period described below) if you provide Yahoo with the following:

1. An affidavit from Mr. Young establishing that Mr. Young created the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo.
2. A court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.

To the extent the 7-day notice period is problematic, you can alternatively request that the court order include a nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account.

Yahoo otherwise reserves all rights and objections. Please let me know if you have any questions or would like to discuss.

Best,

Anna



**Anna Hsia | Counsel**

235 Montgomery Street, Suite 425

San Francisco, CA 94104

[415 590 2341](tel:4155902341)

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [mailto:[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)]

**Sent:** Friday, December 16, 2016 12:29 PM

**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** US v Nicholas Young, 16cr265

Hi Anna -- thanks for your call. Attached are Nicholas Young's unopposed motion for the relevant communications and the court's order. At your earliest convenience, please let me know if Yahoo will insist on another subpoena, instead of sending all of Mr. Young's own June 2011 emails, and if so why. (Fwiw, I believe the total email count for that set is something like 4....not terribly huge in absolute terms and relative to the face of the subpoena.)

In a conference call yesterday the prosecutor said he would consider sending additional search warrants and/or pressing for compliance with existing ones in the event we cannot reach agreement on this Rule 17 subpoena. All things considered, to us, it just seems so much easier to produce a small set of Mr. Young's own emails.

Thank you,  
nick

## EXHIBIT 4

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]  
**Sent:** Monday, December 19, 2016 12:11 PM  
**To:** Anna Hsia <Anna@zwillgen.com>  
**Subject:** Re: US v Nicholas Young, 16cr265

Hi Anna, I just called you to discuss the subpoena. I'm pretty confident we can work this out quickly with another call.

Are you available this afternoon?

On Sat, Dec 17, 2016 at 5:10 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

Hi Nick,

Thank you for your email. Unfortunately, the court order you sent does not compel production of documents by Yahoo; it only authorizes the issuance of a subpoena. Yahoo therefore cannot rely on such a court order to produce documents.

As we have explained, part of the issue here is that Mr. Young's alleged Yahoo account no longer exists, so all data requested needs to be exported from a different user's account. Because of these unique circumstances, including the separate privacy interests of the user from whose account the emails would be produced, Yahoo needs to take reasonable steps to ensure that Mr. Young is indeed the owner of the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and the originator of the relevant emails.

We understand that you are no longer requesting that Yahoo identify a single responsive email for production (as Yahoo cannot comply with such a request). Rather, you are now requesting Yahoo produce all emails from the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account to the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in or after June 2011. Given the unique circumstances described herein, and in conversations between you and Yahoo's legal counsel, we are proposing the following solution, which will allow Yahoo to comply with its obligations while providing you with the requested emails.

Yahoo can produce the emails (after the 7-day notice period described below) if you provide Yahoo with the following:

1. An affidavit from Mr. Young establishing that Mr. Young created the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo.
2. A court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.

To the extent the 7-day notice period is problematic, you can alternatively request that the court order include a nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account.

Yahoo otherwise reserves all rights and objections. Please let me know if you have any questions or would like to discuss.

Best,

Anna



Anna Hsia | Counsel

235 Montgomery Street, Suite 425

San Francisco, CA 94104

[415 590 2341](tel:4155902341)

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [mailto:[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)]

**Sent:** Friday, December 16, 2016 12:29 PM

**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** US v Nicholas Young, 16cr265

Hi Anna -- thanks for your call. Attached are Nicholas Young's unopposed motion for the relevant communications and the court's order. At your earliest convenience, please let me know if Yahoo will insist on another subpoena, instead of sending all of Mr. Young's own June 2011 emails, and if so why. (Fwiw, I believe the total email count for that set is something like 4....not terribly huge in absolute terms and relative to the face of the subpoena.)

In a conference call yesterday the prosecutor said he would consider sending additional search warrants and/or pressing for compliance with existing ones in the event we cannot reach agreement on this Rule 17 subpoena. All things considered, to us, it just seems so much easier to produce a small set of Mr. Young's own emails.

Thank you,  
nick

## EXHIBIT 5

**From:** Anna Hsia  
**Sent:** Monday, December 19, 2016 1:07 PM  
**To:** Nicholas Smith <nds@davidbsmithpllc.com>  
**Subject:** Re: US v Nicholas Young, 16cr265

I'm out of the office today, but you can call my mobile at [REDACTED].

---

On: 19 December 2016 12:10, "Nicholas Smith" <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)> wrote:  
Hi Anna, I just called you to discuss the subpoena. I'm pretty confident we can work this out quickly with another call.

Are you available this afternoon?

On Sat, Dec 17, 2016 at 5:10 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

Hi Nick,

Thank you for your email. Unfortunately, the court order you sent does not compel production of documents by Yahoo; it only authorizes the issuance of a subpoena. Yahoo therefore cannot rely on such a court order to produce documents.

As we have explained, part of the issue here is that Mr. Young's alleged Yahoo account no longer exists, so all data requested needs to be exported from a different user's account. Because of these unique circumstances, including the separate privacy interests of the user from whose account the emails would be produced, Yahoo needs to take reasonable steps to ensure that Mr. Young is indeed the owner of the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and the originator of the relevant emails.

We understand that you are no longer requesting that Yahoo identify a single responsive email for production (as Yahoo cannot comply with such a request). Rather, you are now requesting Yahoo produce all emails from the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account to the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in or after June 2011. Given the unique circumstances described herein, and in conversations between you and Yahoo's legal counsel, we are proposing the following solution, which will allow Yahoo to comply with its obligations while providing you with the requested emails.

Yahoo can produce the emails (after the 7-day notice period described below) if you provide Yahoo with the following:



1. An affidavit from Mr. Young establishing that Mr. Young created the [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) account, and that Mr. Young is the originator of the emails in question and consents to their production by Yahoo.
2. A court order requiring production of the aforementioned emails from Yahoo after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.

To the extent the 7-day notice period is problematic, you can alternatively request that the court order include a nondisclosure order prohibiting Yahoo from disclosing the legal process to the owner of the [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) account.

Yahoo otherwise reserves all rights and objections. Please let me know if you have any questions or would like to discuss.

Best,

Anna



Anna Hsia | Counsel

235 Montgomery Street, Suite 425

San Francisco, CA 94104

[415 590 2341](tel:4155902341)

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [mailto:[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)]

**Sent:** Friday, December 16, 2016 12:29 PM

**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** US v Nicholas Young, 16cr265

Hi Anna -- thanks for your call. Attached are Nicholas Young's unopposed motion for the relevant communications and the court's order. At your earliest convenience, please let me know if Yahoo will insist on another subpoena, instead of sending all of Mr. Young's own June 2011 emails, and if so why. (Fwiw, I believe the total email count for that set is something like 4....not terribly huge in absolute terms and relative to the face of the subpoena.)

In a conference call yesterday the prosecutor said he would consider sending additional search warrants and/or pressing for compliance with existing ones in the event we cannot reach agreement on this Rule 17 subpoena. All things considered, to us, it just seems so much easier to produce a small set of Mr. Young's own emails.

Thank you,  
nick

## EXHIBIT 6

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]

**Sent:** Friday, December 23, 2016 8:30 AM

**To:** Anna Hsia <Anna@zwillgen.com>

**Subject:** Yahoo subpoena

Anna -- please see the attached order compelling production from Yahoo.

We will be providing to you Nicholas Young's affidavit soon. Please make sure the relevant emails are not eliminated in the meantime.

Have a nice holiday weekend.

Best,  
Nick

## EXHIBIT 7

**From:** Anna Hsia  
**Sent:** Friday, December 23, 2016 2:41 PM  
**To:** 'Nicholas Smith' <nds@davidbsmithpllc.com>  
**Subject:** RE: Yahoo subpoena

Nick,

Thank you for this Order. I am, however, troubled that you didn't serve me with a copy of the motion to compel, so that Yahoo could confirm the motion to compel was consistent with our agreement. Indeed, you informed me in our call on Monday that you would be emailing me your motion to compel, but I have not received any such motion. Yahoo did not and cannot stipulate to a motion without having reviewed the motion before filing. Accordingly, please provide me with the motion to compel that was filed, so that Yahoo can confirm that the contents are consistent with our agreement. Until we receive such motion and can review its contents to confirm it is consistent with our agreement, Yahoo reserves its rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition. Thanks in advance.

Best,  
Anna



Anna Hsia | Counsel

235 Montgomery Street, Suite 425  
San Francisco, CA 94104  
415 590 2341

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [<mailto:nds@davidbsmithpllc.com>]  
**Sent:** Friday, December 23, 2016 8:30 AM  
**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>  
**Subject:** Yahoo subpoena

Anna -- please see the attached order compelling production from Yahoo.

We will be providing to you Nicholas Young's affidavit soon. Please make sure the relevant emails are not eliminated in the meantime.

Have a nice holiday weekend.

Best,  
Nick

## EXHIBIT 8

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]  
**Sent:** Friday, December 23, 2016 3:26 PM  
**To:** Anna Hsia <Anna@zwillgen.com>  
**Subject:** Re: Yahoo subpoena

Anna, can you provide me with your number again?

I recall saying that I would get an order from the court compelling the production of the June 2011 emails. I don't remember saying we would need to have conversations about the wording of the motion.

In any event, the order is clear on what will be produced, and that's consistent with your email to me concerning Yahoo's position, correct? Or do you disagree?

Nicholas D. Smith  
David B. Smith PLLC  
7 E 20th Street, New York, NY 10003  
(917) 722-1096

On Dec 23, 2016, at 5:41 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

Nick,

Thank you for this Order. I am, however, troubled that you didn't serve me with a copy of the motion to compel, so that Yahoo could confirm the motion to compel was consistent with our agreement. Indeed, you informed me in our call on Monday that you would be emailing me your motion to compel, but I have not received any such motion. Yahoo did not and cannot stipulate to a motion without having reviewed the motion before filing. Accordingly, please provide me with the motion to compel that was filed, so that Yahoo can confirm that the contents are consistent with our agreement. Until we receive such motion and can review its contents to confirm it is consistent with our agreement, Yahoo reserves its rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition. Thanks in advance.

Best,  
Anna

<image001.gif> **Anna Hsia** | Counsel  
235 Montgomery Street, Suite 425  
San Francisco, CA 94104  
415 590 2341  
[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [mailto:nds@davidbsmithpllc.com]  
**Sent:** Friday, December 23, 2016 8:30 AM



**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** Yahoo subpoena

Anna -- please see the attached order compelling production from Yahoo.

We will be providing to you Nicholas Young's affidavit soon. Please make sure the relevant emails are not eliminated in the meantime.

Have a nice holiday weekend.

Best,

Nick

## EXHIBIT 9

**From:** Nicholas Smith [mailto:[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)]  
**Sent:** Monday, December 26, 2016 9:22 AM  
**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>  
**Subject:** Re: Yahoo subpoena

Anna-- I called you on Friday at around 3:30 pm PT to discuss this with you, without any luck. Attached is the motion that prompted the order I've already emailed you. As you can see, it seeks the relief we agreed to -- an order compelling the production of June 2011 emails from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com). If you look at your 12/17/16 email to me, you will also see that you specifically ask for a court order, not the draft motion itself. During our call, I remember saying that I would obtain a court order for you, not that we would need to go back and forth over the wording of the motion. Please confirm you will be producing the emails upon receipt of Young's affidavit and after the notice period.

Best,  
Nick

On Fri, Dec 23, 2016 at 6:25 PM, Nicholas Smith <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)> wrote:  
Anna, can you provide me with your number again?

I recall saying that I would get an order from the court compelling the production of the June 2011 emails. I don't remember saying we would need to have conversations about the wording of the motion.

In any event, the order is clear on what will be produced, and that's consistent with your email to me concerning Yahoo's position, correct? Or do you disagree?

Nicholas D. Smith  
David B. Smith PLLC  
7 E 20th Street, New York, NY 10003  
[\(917\) 722-1096](tel:(917)722-1096)

On Dec 23, 2016, at 5:41 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

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its rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition.  
Thanks in advance.

Best,

Anna

<image001.gif> **Anna Hsia** | Counsel  
235 Montgomery Street, Suite 425  
San Francisco, CA 94104  
[415 590 2341](tel:4155902341)  
[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [<mailto:nds@davidbsmithpllc.com>]  
**Sent:** Friday, December 23, 2016 8:30 AM  
**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>  
**Subject:** Yahoo subpoena

Anna -- please see the attached order compelling production from Yahoo.

We will be providing to you Nicholas Young's affidavit soon. Please make sure the relevant emails are not eliminated in the meantime.

Have a nice holiday weekend.

Best,  
Nick

## EXHIBIT 10

**From:** Anna Hsia  
**Sent:** Monday, December 26, 2016 2:13 PM  
**To:** 'Nicholas Smith' <nds@davidbsmithpllc.com>  
**Subject:** RE: Yahoo subpoena

Nick,

Thank you for finally providing the motion. We will review and determine whether it is consistent with our previous agreement.

It is, however, entirely incorrect that Yahoo agreed not to oppose a motion to compel, sight unseen. To be clear, I specifically informed you that Yahoo would not oppose a motion, *provided the motion to compel was consistent with our agreement, and provided you did not seek the sanctions you threatened*. I also specifically informed you that if you sought sanctions against Yahoo, Yahoo would oppose such motion and seek sanctions for the time and expense incurred in opposing such a motion. In response, you informed me that you expected to email me your motion to compel "later today." That motion never came. And in any event, it is inappropriate and unprofessional for you to represent to a court that Yahoo did not oppose a motion, without you ever having served said motion upon Yahoo.

Secondly, the Order you obtained is not consistent with our agreement. As I informed you in my email of December 17, 2016, the Order needed by Yahoo would require "production of the aforementioned emails from Yahoo *after (a) Yahoo receives an affidavit from Mr. Young as described above, and (b) the mohamed\_2060@yahoo.com account holder does not object to production within 7 days after receiving notice from Yahoo about the court order.*" (emphasis added). The Order you obtained is not consistent with our agreement.

In any event, please provide Mr. Young's affidavit. We will review your motion to compel and Order and determine whether they are sufficient to authorize production by Yahoo after the required notice period. Until Yahoo has reviewed the motion to compel, Yahoo reserves its rights to object to the motion and ensuing Order relying on Yahoo's purported non-opposition.

Best,  
Anna



**Anna Hsia** | Counsel

235 Montgomery Street, Suite 425  
San Francisco, CA 94104  
415 590 2341

[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [<mailto:nds@davidbsmithpllc.com>]  
**Sent:** Monday, December 26, 2016 9:22 AM  
**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>  
**Subject:** Re: Yahoo subpoena

Anna-- I called you on Friday at around 3:30 pm PT to discuss this with you, without any luck. Attached is the motion that prompted the order I've already emailed you. As you can see, it seeks the relief we agreed to -- an order compelling the production of June 2011 emails from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com). If you look at your 12/17/16 email to me, you will also see that you specifically ask for a court order, not the draft motion itself. During our call, I remember saying that I would obtain a court order for you, not that we would need to go back and forth over the wording of the motion. Please confirm you will be producing the emails upon receipt of Young's affidavit and after the notice period.

Best,  
Nick

On Fri, Dec 23, 2016 at 6:25 PM, Nicholas Smith <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)> wrote:  
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Nicholas D. Smith  
David B. Smith PLLC  
7 E 20th Street, New York, NY 10003  
[\(917\) 722-1096](tel:(917)722-1096)

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Best,

Anna

<image001.gif> **Anna Hsia** | Counsel  
235 Montgomery Street, Suite 425  
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[415 590 2341](tel:4155902341)  
[Bio](#) | [Blog](#) | [LinkedIn](#)

**From:** Nicholas Smith [<mailto:nds@davidbsmithpllc.com>]  
**Sent:** Friday, December 23, 2016 8:30 AM  
**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>  
**Subject:** Yahoo subpoena

Anna -- please see the attached order compelling production from Yahoo.

We will be providing to you Nicholas Young's affidavit soon. Please make sure the relevant emails are not eliminated in the meantime.

Have a nice holiday weekend.

Best,  
Nick



## EXHIBIT 11

**From:** Nicholas Smith [mailto:[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)]

**Sent:** Monday, December 26, 2016 4:14 PM

**To:** Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)>

**Subject:** Re: Yahoo subpoena

Anna-- In light of your position that the (second) order compelling production of the information in the subpoena served on Yahoo on Nov. 30 is inconsistent with our agreement, please see the attached.

On Mon, Dec 26, 2016 at 5:28 PM, Nicholas Smith <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)> wrote:  
Hi Anna-- I've tried to reach you several times now at your office, last Friday and today. You haven't answered.

I'm sorry to say this, but I disagree with you about your characterization of our last conversation. You write that Yahoo never agreed not to oppose the motion "sight unseen." In fact, I told you Mr. Young would simply obtain the order that you requested and that I would provide it to you. As you know, we never had a conversation about sending you a draft motion. You also write that if Mr. Young sought sanctions for Yahoo's failure to comply with the subpoena, Yahoo would retaliate by seeking sanctions itself. As you know, you never made that commitment over the phone.

You say that the (latest) order is inconsistent with our agreement because it does not specifically reference Young's affidavit and the notice period Yahoo is by discretion giving to a non-citizen who likely does not own a computer. That is false. The order simply state that Yahoo shall produce the June 2011 emails, not that it must do so without the two aforementioned conditions being satisfied. As you will see, the motion says nothing inconsistent with those conditions.

The motion, which has been publicly available to you for days, was sent to you this morning. Please return my call when you have had a chance to review it to end this burdensome and unnecessary exercise.

Nicholas D. Smith  
David B. Smith PLLC  
7 E 20th Street, New York, NY 10003  
[\(917\) 722-1096](tel:(917)722-1096)

On Dec 26, 2016, at 5:13 PM, Anna Hsia <[Anna@zwillgen.com](mailto:Anna@zwillgen.com)> wrote:

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<image001.gif> **Anna Hsia** | Counsel  
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David B. Smith PLLC

7 E 20th Street, New York, NY 10003

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Have a nice holiday weekend.

Best,  
Nick

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 16cr265 (LMB)
	)	
NICHOLAS YOUNG,	)	
	)	
Defendant.	)	
<hr style="width: 45%; margin-left: 0;"/>	)	

**DECLARATION OF NICHOLAS LYON IN SUPPORT OF YAHOO! INC.'S OPPOSITION  
TO DEFENDANT NICHOLAS YOUNG'S MOTION FOR AN ORDER TO SHOW CAUSE AS  
TO WHY YAHOO! INC. SHOULD NOT BE HELD IN CONTEMPT**

I, Nicholas Lyon, declare as follows:

1. I am a Senior Legal Counsel at Yahoo! Inc ("Yahoo"). I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration. If called to testify, I could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a subpoena issued by counsel for Defendant Nicholas Young and served upon Yahoo on or about November 30, 2016.

3. Attached hereto as Exhibit 2 is a true and correct copy of a December 6, 2016 letter sent by Yahoo to Nicholas Smith ("Mr. Smith"), counsel for Defendant Nicholas Young.

4. On or about December 15, 2016, I spoke with Mr. Smith by telephone regarding the subpoena served upon Yahoo. After the call, Mr. Smith and I exchanged multiple emails. A true and correct copy of the full email string between Mr. Smith and me is attached hereto as Exhibit 3.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of January 2017 in Sunnyvale, California.

By: 

Nicholas Lyon



### **CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of January, 2017, I will cause the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

David Benjamin Smith  
Smith & Zimmerman PLLC  
108 North Alfred Street  
Alexandria, VA 22314  
(703) 548-8911  
Fax: (703) 548-8935  
Email: [dbs@davidbsmithpllc.com](mailto:dbs@davidbsmithpllc.com)

Gordon D. Kromberg  
United States Attorney's Office  
2100 Jamieson Ave  
Alexandria, VA 22314  
(703)299-3700  
Email: [gordon.kromberg@usdoj.gov](mailto:gordon.kromberg@usdoj.gov)

John T. Gibbs  
US Attorney's Office (Alexandria-NA)  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Email: [john.gibbs@usdoj.gov](mailto:john.gibbs@usdoj.gov)

And I hereby certify that I will cause the document to be mailed by U.S. mail to the following non-filing user:

Nicholas D. Smith  
7 East 20th Street  
New York, NY 10003  
Phone: (917) 722-1096  
[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)

### **ZWILLGEN PLLC**

By: /s/ Jonathan S. Frankel

Jonathan S. Frankel (VA Bar No. 40974)  
1900 M Street, NW, Suite 250  
Washington, DC 20036  
Phone (202) 296-3585  
Fax: (202) 706-5298  
[jon@zwillgen.com](mailto:jon@zwillgen.com)  
**Attorneys for Non-Party**  
**Yahoo! Inc.**

## EXHIBIT 1

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case

12:27pm

## UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia



United States of America )

NICHOLAS YOUNG )

Case No. 16-mj-355 )

Defendant )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR  
OBJECTS IN A CRIMINAL CASE

To: Yahoo! Inc., Custodian of Records, 701 First Avenue, Sunnyvale, CA 94089, Registered Agent: CT Corporation ,  
818 West 7th Street, Suite 930, Los Angeles, CA 90017  
 (Name of person to whom this subpoena is directed)

**YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

On 6/11/2011, at 12:56:02, "mohamed\_2060@yahoo.com" sent an email to "freedomforlibya777@yahoo.com." Produce the \*reply\* email sent from freedomforlibya777@yahoo.com to mohamed\_2060@yahoo.com in response to that email.

Place: 108 North Alfred Street, Alexandria, Virginia 22314

Date and Time: 12/9/16 at 12 pm

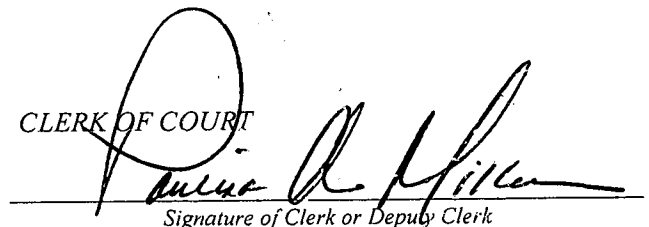
Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date:

NOVEMBER 28, 2016

CLERK OF COURT



Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Nicholas Young, who requests this subpoena, are:

Nicholas D. Smith, 7 East 20th Street, New York, NY 10003, nds@davidbsmithpllc.com, 917-722-1096

**Notice to those who use this form to request a subpoena**

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case (Page 2)

Case No. \_\_\_\_\_

**PROOF OF SERVICE**

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.: \_\_\_\_\_

**Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)**

**(c) Producing Documents and Objects.**

(1) **In General.** A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) **Quashing or Modifying the Subpoena.** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) **Subpoena for Personal or Confidential Information About a Victim.** After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) **Service.** A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

**(e) Place of Service.**

(1) **In the United States.** A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) **In a Foreign Country.** If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(g) **Contempt.** The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

## EXHIBIT 2



December 6, 2016

*Via U.S. Mail*

Nicholas D. Smith, Esq.  
David B. Smith, PLLC  
7 East 20th St.  
New York, NY 10003

Re: Request for Information Pertaining to User Accounts: mohamed\_2060@yahoo.com, et al.  
United States of America v. Nicholas Young, 16-mj-355  
(Internal Reference No. 330483)

Dear Mr. Smith:

Yahoo! Inc. ("Yahoo") is in receipt of a subpoena dated November 28, 2016, in the above-referenced matter.

Please be advised that the Stored Communications Act ("SCA"), 18 U.S.C. § 2701, *et seq.*, prohibits Yahoo from disclosing the information you seek. Specifically, the SCA prohibits Yahoo from disclosing "contents" of electronic communications, unless one of the specifically enumerated exceptions to the prohibition is satisfied. None of these exceptions provide a basis for disclosure in response to legal process, even a court order, secured at a non-governmental entity's request. *See, e.g., Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726 (9th Cir. 2011) (affirming lower court's decision to deny a request to order production of emails to a non-governmental entity because the emails were protected from such disclosure by the SCA); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va. 2008) (holding that "the clear and unambiguous language" of the SCA prohibited AOL from divulging communications contents because the SCA "does not include an exception for the disclosure of electronic communications pursuant to civil discovery subpoenas").

At least one court has recognized that the SCA can be a frustrating impediment to non-governmental entities seeking discovery. *See Bower v. Bower*, 808 F.Supp.2d 348 (D. Mass. 2011) (recognizing "plaintiff's frustration," but denying motion to compel Yahoo and Google to produce communications contents pursuant to a subpoena because "the SCA precludes Yahoo and Google from producing the requested emails"). Moreover, at least two courts have considered the SCA in the particular context of a criminal defendant seeking discovery; in both instances, the courts ruled squarely against the criminal defendants, finding the SCA barred production of the sought-after electronic communications. *See Facebook, Inc. v. Super. Ct. of S.F. City & Cnty.*, 192 Cal. Rptr. 3d 443 (Cal. Ct. App. 2015) (reversing lower court's denial of Internet social network providers' motion to quash subpoena duces tecum served by defendants, finding "no support for the trial court's order for pretrial production of [social network account contents] otherwise subject to the SCA's protections"), *petition for review granted*, 362 P.3d 430 (Cal. 2015); *U.S. v. Amawi* 552 F.Supp.2d 679 (N.D. Oh. 2008) (rejecting defendant's motion under 18 U.S.C. § 2703(d) to compel disclosure of electronic communications because "the Office of the Federal Public Defender is not a 'government entity' within the meaning of § 2703").

We are not unappreciative of your desire to obtain the requested electronic communications contents and we acknowledge your likely dismay that the SCA prohibits Yahoo from making the requested disclosure. However, Yahoo is constrained with respect to the contents of electronic communications by unambiguous federal law. Consistent with that law, Yahoo has not produced any content information in response to the subpoena.

Please note that with regard to email content, Yahoo only maintains and has access to the contents a user has retained in his or her email account. Accordingly, if a user has deleted email content, Yahoo would be unable to disclose such content even if the disclosure was not prohibited by law.

By this response, Yahoo does not waive any objection to further proceedings in this matter.

Sincerely,

Yahoo! Inc. Legal Department

## EXHIBIT 3



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**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

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**From:** Nicholas Smith (nds@davidbsmithpllc.com)

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**To:** nlyon@yahoo-inc.com;

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**Date:** Friday, December 16, 2016 7:44 AM

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Nicholas- Please let me know when you're available today to discuss complying with the subpoena. Thank you.

Nick

On Thu, Dec 15, 2016 at 4:14 PM, Nicholas Lyon <nlyon@yahoo-inc.com> wrote:

Hi Nicholas,

Thank you for your email. Just to clarify the record -- and as I clearly explained before ending our roughly 15-minute call this morning -- I ended our call because I had to run to a 9am (Pacific Time) meeting. Indeed, calling you was the first action I took upon arriving to the office early this morning here in California. However, as I further explained to you when ending our call, I also did not feel that -- given your tone and the direction of the call -- further conversation with you over the phone at that time would be productive to either of us. I indicated that I would follow up with an email.

In that email, I did provide you with my direct phone number. You are, of course, welcome to call me at your convenience if you would like to discuss further in a constructive manner; if I'm not available at that time, I will make every effort to return your call as expeditiously as possible.

Lastly, Yahoo has objected -- now multiple times -- to the subpoena we received in this matter dated November 28, 2016. I have also offered you one possible path forwards to rectify the concerns Yahoo raised about that subpoena. And as I mentioned below, in the event that Yahoo receives new legal process in this matter, presumably along with any sworn affidavit from your client that satisfies Yahoo's objections under the SCA, we will promptly evaluate your legal process (and affidavit) in accordance with applicable law and our internal policies.

Sincerely,

Nick

---

**From:** Nicholas Smith <nds@davidbsmithpllc.com>

**To:** Nicholas Lyon <nlyon@yahoo-inc.com>

**Cc:** David Smith <ds@davidbsmithpllc.com>

**Sent:** Thursday, December 15, 2016 12:50 PM

**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Nick --

As I allowed on the phone, I was (and am) willing to slowly walk through each semantic permutation of what is meant variously by "the reply email" and "in response to." Of course, understanding the sense of the words used by the subpoenaing party is crucial to compliance by the recipient.. It always is, isn't it.

The problem is that when I attempted to clarify any perceived ambiguity in the subpoena's demand, you cut off the conversation and stated you would not speak about the issue any longer. Then you hung up the phone. Instead of working with me on the meaning of the subpoena, you offered one and only one "possible path forwards" which happens to entail a cycle of unnecessary additional subpoenas and burden on the court.

To repeat, what the subpoena means by "the reply email" can be shown by the following example. Nick Lyon sent Nick Smith an email on 12/15/2016, at 3:23 pm. The email I am writing to Nick Lyon at this very moment is "the reply email to"/"in response to" the email from Nick Lyon on 12/15/2016, at 3:23 pm, because (1) no other emails have passed from Nick Smith to Nick Lyon in the meantime and (2) the Lyon 12/15/2016, at 3:23 pm email can be seen in the email chain directly below the email I am writing. This is what is meant by "the reply email"/"in response to." Does that make sense?

So we ask you to promptly: (a) explain why Yahoo is "unable to identify with certainty" the email sought by the subpoena and what remaining ambiguity there is in the subpoena, if any, (b) explain why an additional set of subpoenas, at great inconvenience to the court, is required for your production of all June 2011 emails between [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com), when the originator-exception in the SCA does not require any subpoena, and (c) tell us when you are available to hold a complete phone conversation to resolve the perceived vagueness problems with the subpoena without your decision to prematurely terminate the phone call.

Nick

On Thu, Dec 15, 2016 at 3:23 PM, Nicholas Lyon <[nlyon@yahoo-inc.com](mailto:nlyon@yahoo-inc.com)> wrote:  
Hi Nicholas,

Thank you for your email, and I apologize if you found my explanation on our call (and in my below email) less than clear. Please bear with me as I try again:

As you know, your subpoena purports to require the production of "**the** \*reply\* email sent from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in response to [an email sent by [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) to [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) on June 11, 2011, at 12:56:02]" (emphasis added).

As I previously explained, Yahoo cannot identify which specific email -- if, in fact, any specific email -- was sent from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) "in response to" an email sent by [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) to [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) on June 11, 2011, at 12:56:02. Accordingly, Yahoo would -- in addition to the non-exclusive objections Yahoo raised originally under the Stored Communications Act ("SCA") -- be unable to comply with your subpoena as written, and thereby objects to your subpoena as overly vague. Hence, I tried to offer in good faith a possible path forwards for you.

Please know that Yahoo remains happy to continue working with you in good faith. As drafted, your subpoena does not compel -- and indeed does not purport to compel -- Yahoo to produce "every email from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in the month of June

2011". In the event that Yahoo receives new legal process in this matter, presumably along with any sworn affidavit from your client that satisfies Yahoo's objections under the SCA, we will promptly evaluate your legal process (and affidavit) in accordance with applicable law and our internal policies.

I do want to be clear though that, again, in the event that we do receive any valid legal process in this matter, Yahoo provides notice to the affected user(s) prior to any disclosure of data from their account in order to provide them with an opportunity to challenge requests for their data.

Sincerely,

Nick

---

**From:** Nicholas Smith <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)>

**To:** Nicholas Lyon <[nlyon@yahoo-inc.com](mailto:nlyon@yahoo-inc.com)>

**Cc:** David Smith <[dbs@davidbsmithpllc.com](mailto:dbs@davidbsmithpllc.com)>

**Sent:** Thursday, December 15, 2016 11:36 AM

**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Nick --

You called me this morning to explain why Yahoo has declined to comply with a court-ordered subpoena by the 12/9 return date. Nothing I heard during our call - and nothing in the above email - offers a sufficient explanation. You write that Yahoo will insist on receiving a sworn affidavit from Mr. Young stating that he created the freedomforlibya777 account. As I said during our call, we will provide you with an affidavit with the sworn statements you request.

Less clear is your representation that Yahoo would be "unable to identify with certainty" a reply email in response to the email sent from [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) to [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com), on June 11, 2011 at 12:56:02. As you will recall, during our call I asked you to explain why Yahoo would not be able to "identify with certainty" this reply email. Rather than offer an explanation, you suggested the "possible path forwards" which you reiterate in your email -- entailing going back to the court for at least two additional subpoenas.

Several times I repeated my request that you explain the technical (or semantic) basis for Yahoo's inability to determine whether, for example, Email X to Mr. Y was directly replied to by Mr. Y in a follow-up email. I asked you whether you could simply identify the very first email response from freedomforlibya777 to mohamed\_2060 after the 6/11/11, 12:56:02 email. I pointed out that the government itself, working with your company, has identified a limited set of emails in the month of 6/11, and asked whether you could simply produce all of those emails.

In short, I asked you to work with me, on a good faith basis, in order to ensure subpoena compliance, so that the parties would not need to burden the court with an indeterminate stream of ever-refined subpoenas even though all of the parties -- the court, the defendant, the federal government, and Yahoo -- know exactly what content is being sought without going through these highly inefficient moves requiring judicial intervention at each step of the way. Moreover, as you know, nothing in 18 USC s 2702(b)(1) requires a subpoena to satisfy the originator-created exception to SCA nondisclosure in the first place.

Please promptly explain why, upon receipt of Mr. Young's sworn affidavit, Yahoo will not produce every email from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in the month

Best,  
Nick

On Thu, Dec 15, 2016 at 1:52 PM, Nicholas Lyon <[nlyon@yahoo-inc.com](mailto:nlyon@yahoo-inc.com)> wrote:

Hi Nicholas,

Thank you again for talking with me on the phone this morning -- I'm glad we were able to connect.

As I explained, Yahoo is -- for the following, non-exclusive reasons -- unable to comply with your subpoena dated November 28, 2016, seeking the production of "the \*reply\* email sent from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) in response to [an email sent by [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) to [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) on June 11, 2011, at 12:56:02]."

In addition to the objections Yahoo set forth in our original response to you (dated December 6, 2016) under the Stored Communications Act ("SCA"), 18 U.S.C. § 2701, *et seq.*, prohibiting Yahoo from disclosing the information you seek, I wanted to further clarify that --

**even if**, as I suggested on our call as part of a possible path forwards (also described further below), you were able to obtain a sworn affidavit from your client (the alleged user of the former Yahoo account [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com), which no longer exists) to Yahoo's satisfaction that:

- 1.) gives his express consent and authorization to you to receive, review, copy, and otherwise obtain access to all information of any kind held by Yahoo relating to his account, including but not limited to information about his identity, his online activities and the contents of all electronic files and communications maintained by Yahoo related to him or his Yahoo ID;
- 2.) further consents, authorizes, and requests that Yahoo disclose the specific requested information (i.e., the alleged email at issue) to you; and
- 3.) in connection with the consent and authorization to release information, hereby agrees to hold harmless and forever holds harmless Yahoo for the disclosure of such information and forever waives on his behalf, and on behalf of his heirs and assigns, any and all claims resulting from Yahoo's disclosure of any information relating to his account pursuant to his consent and authorization.

-- and you then provided that affidavit to Yahoo in conjunction with your subpoena, Yahoo would be unable to identify with certainty any responsive documents (i.e., the purported \*reply\* email) to produce in response to your subpoena as presently crafted.

That is, Yahoo would be unable to identify with certainty the alleged \*reply\* email described in your subpoena sent from [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) to [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) (in response to an email sent by [mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com) to [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com) on June 11, 2011, at 12:56:02). Accordingly, Yahoo objects to your subpoena as overly vague in that it does not specify with sufficient particularity the specific email that you seek for Yahoo to identify and ultimately produce.

As I suggested on our call as a possible path forwards, you may wish to consider serving a new subpoena on Yahoo seeking the non-content headers (i.e., to/from fields, and time/datestamp)

from the target Yahoo account ([mohamed\\_2060@yahoo.com](mailto:mohamed_2060@yahoo.com)) for communications with [freedomforlibya777@yahoo.com](mailto:freedomforlibya777@yahoo.com). Obtaining the non-content headers might then allow you to identify with accuracy which (if any) emails you in fact seek from the target Yahoo account, and then provide Yahoo with a revised subpoena along with such an above-referenced sworn affidavit from your client (i.e., relying on the SCA's exceptions for disclosure of communications as you indicate in the email thread below).

In the event that we do receive any valid legal process in this matter, please do be advised that we provide notice to users prior to any disclosure of their data in order to provide them with an opportunity to challenge requests for their data. Our initial notice to the affected user will simply state that we have received legal process seeking information pertaining to them, and advises that Yahoo will respond to the legal process 15 calendar days from the date of the notice, unless we are notified that a motion to quash or other legally appropriate challenge to the legal process has been filed, or the matter has been otherwise resolved. Thereafter, if requested by an affected user we may disclose to him/her a copy of the legal process. Please note that we search for and preserve all responsive information prior to providing notice to any user. Therefore, notice will not put responsive information at risk of destruction by a user. We are deeply committed to protecting our users and their data. Our user notice policy is one expression of this commitment.

Lastly, please note that with regard to email content, Yahoo only maintains and has access to the contents a user has retained in his or her email account. Accordingly, if a user has deleted email content, Yahoo would be unable to disclose such content even if the disclosure was not prohibited by law.

By this response, Yahoo does not waive any objection to further proceedings in this matter.

Sincerely,

Nick Lyon  
Senior Legal Counsel  
Yahoo! Inc.  
408-349-9394

----- Forwarded Message -----

**From:** Nicholas Smith <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)>  
**To:** Mireille Delbecq <[mdelbecq@yahoo-inc.com](mailto:mdelbecq@yahoo-inc.com)>  
**Cc:** David Smith <[dbs@davidbsmithpllc.com](mailto:dbs@davidbsmithpllc.com)>  
**Sent:** Wednesday, December 14, 2016 8:46 AM  
**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Hi Mireille:

Can you please update me on the outcome of our court-ordered subpoena for defendant Nicholas Young's own email? As a reminder, this email is central to Mr. Young's defense in US v. Nicholas Young, 16mj355 (E.D. Va. 2016). It is also an email of which he is the originator pursuant to 18 USC 2702 (b)(1),(3). Furthermore, the government itself has consented to the issuance of this subpoena, meaning they do not object to our collection of the communication. Thus, the federal government, a federal court, and the originator of the

Case 1:16-cr-00265-LMB Document 51-16 Filed 01/05/17 Page 7 of 10 PageID# 280  
communication are all asking Yahoo to produce the email. If your superiors are still considering Mr. Young's request, kindly forward this email to them.

The subpoena's return date was 12/9/16. Timely compliance with the subpoena is of the utmost importance to Mr. Young's case.

Best,  
Nick

On Tue, Dec 13, 2016 at 2:12 PM, Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)> wrote:  
Mireille, I believe I just missed your call. Are you available now? I think I can resolve this dispute quite quickly, as there is likely a misunderstanding concerning the relevant parties.

(b) Exceptions for disclosure of communications. A provider described in subsection (a) may divulge the contents of a communication--

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title [18 USCS § 2517, 2511(2)(a), or 2703];

(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

(4) to a person employed or

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**From:** Mireille Delbecq [mailto:[mdelbecq@yahoo-inc.com](mailto:mdelbecq@yahoo-inc.com) ]

**Sent:** Monday, December 12, 2016 7:26 PM

**To:** [nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)

**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Mr. Smith,

I am attaching a copy of the letter sent on December 6, 2016. Please contact me at the number below if you have questions.

Thanks,

**Mireille Delbecq**

Yahoo Legal Department

P: 408-349-1864

701 First Avenue Sunnyvale CA 94089

**YAHOO!**

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----- Forwarded Message -----

**From:** Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)>

**To:** 'Compliance-Inquiries (Yahoo! Inc.)' <[compliance-inquiries@yahoo-inc.com](mailto:compliance-inquiries@yahoo-inc.com)>

**Sent:** Monday, December 12, 2016 9:17 AM

**Subject:** RE: US v Nicholas Young 16mj355 (ED Va 2016)

Thank you. Please respond to this email with a pdf copy or scan of the letter. We did not receive your December 6 letter. Please also provide me with a contact number so that I can speak with a representative about the subpoena. The subpoena is time sensitive and must be resolved in short order. The Court has already ordered compliance with the subpoena request, and doing so may require real time communication between your company and our side.



Nicholas D. Smith  
David B. Smith pllc  
7 E 20<sup>th</sup> Street, New York, NY 10003  
Direct dial: (917) 722-1096  
[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)

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**From:** Compliance-Inquiries (Yahoo! Inc.) [<mailto:compliance-inquiries@yahoo-inc.com>]  
**Sent:** Monday, December 12, 2016 12:14 PM  
**To:** Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)>  
**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Dear Mr. Smith,

Please be advised a response letter to the referenced subpoena was sent on December 6, 2016 via U.S. mail.

Sincerely,

Yahoo Legal Department

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**From:** Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)>  
**To:** 'Compliance-Inquiries (Yahoo! Inc.)' <[compliance-inquiries@yahoo-inc.com](mailto:compliance-inquiries@yahoo-inc.com)>  
**Cc:** 'Nicholas Smith' <[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)>  
**Sent:** Monday, December 12, 2016 7:52 AM  
**Subject:** RE: US v Nicholas Young 16mj355 (ED Va 2016)

Dear Sir or Madam:

You were served with the attached subpoena duces tecum, ordered by the federal district court in the Eastern District of Virginia. The return date was 12/9/16. We have received no response from Yahoo. Please inform when the subpoena will be complied with.

Best,

Nicholas D. Smith  
David B. Smith pllc  
7 E 20<sup>th</sup> Street, New York, NY 10003  
Direct dial: (917) 722-1096  
[nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com)

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**From:** Compliance-Inquiries (Yahoo! Inc.) [<mailto:compliance-inquiries@yahoo-inc.com>]  
**Sent:** Monday, October 17, 2016 1:07 PM  
**To:** Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)>  
**Subject:** Re: US v Nicholas Young 16mj355 (ED Va 2016)

Dear Mr. Smith,

Yahoo accepts service of valid U.S. legal process via one of the means below.

*FedEx:*  
Yahoo! Inc.  
Custodian of Records  
701 First Avenue  
Sunnyvale, CA 94089

*Registered Agent:*  
CT Corporation

Sincerely,

Yahoo Legal Department

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**From:** Nicholas Smith <[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)>  
**To:** [Compliance-inquiries@yahoo-inc.com](mailto:Compliance-inquiries@yahoo-inc.com)  
**Sent:** Monday, October 17, 2016 9:51 AM  
**Subject:** US v Nicholas Young 16mj355 (ED Va 2016)

Dear Sir or Madam – please see the attached request for information in connection with US v. Nicholas Young, 16mj355 (ED Va 2016)

Thank you.

Nicholas D. Smith  
David B. Smith pllc  
7 E 20<sup>th</sup> Street, New York, NY 10003  
Direct dial: (917) 722-1096  
[nsmith@smithzimmerman.com](mailto:nsmith@smithzimmerman.com)



