

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BUZZFEED, INC. and BEN SMITH,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION, OFFICE OF  
THE DIRECTOR OF NATIONAL  
INTELLIGENCE, JAMES COMEY, and JAMES  
CLAPPER,

*Defendants.*

No. 1:17-mc-02429-APM

**DEFENDANTS' MOTION FOR EXTENSION OF TIME**  
**TO SUPPLEMENT *EX PARTE* DECLARATION**  
**IN SUPPORT OF LAW ENFORCEMENT PRIVILEGE**

The Government hereby moves the Court for a two-and-a-half-week extension of time – until Monday, March 19, 2018 – to allow it to file a supplemental *ex parte* declaration further justifying its assertion of the law enforcement investigatory privilege in these proceedings. In support of this motion, the Government states as follows:

1. On September 27, 2017, BuzzFeed, Inc. and Ben Smith (collectively, “Buzzfeed”) filed the instant miscellaneous action and motion to compel, arising from seven third-party subpoenas they had previously served on various government agencies and former government officials. *See* ECF No. 1 (Mot. to Compel). On November 13, 2017, the Government filed a memorandum in opposition to BuzzFeed’s motion to compel arguing, *inter alia*, that the testimony BuzzFeed seeks to compel in this action is protected by the law enforcement investigatory privilege. *See* ECF No. 8 (Gov’t Opp. to Mot. to Compel), at 31-37.

2. On February 15, 2018, at oral argument on BuzzFeed’s motion to compel, this Court instructed the Government “to supplement its affidavit about the law enforcement implications of disclosing” that the Government possessed “pages 34 and 35” of the document embedded in BuzzFeed’s article “as of January 10th.” Transcript of Feb. 15, 2018, Oral Argument (“Trans.”) at 50:4-50:10. The Court further ordered that the Government file such a supplemental declaration by March 1, 2018. *See* Minute Order of Feb. 16, 2018.

3. The Government requires additional time to prepare a supplemental declaration that supplies the greater specificity – including, if appropriate, classified details – that the Court requested about the impact on law enforcement investigations of the particular disclosure identified by the Court at the February 15 hearing. *See* Trans. at 31:18-31:20 (requesting that the Government “articulate a specific manner in which [a] limited factual disclosure would impact an ongoing law enforcement investigation”).

4. The provision of such detail requires careful consideration of the sensitivities surrounding the issues presented by this proceeding, in consultation with various members of the intelligence community. It also requires consideration of recent developments that may bear on the Government’s assertion of the privilege in this matter. The Government therefore respectfully requests an additional eighteen days, to permit the careful consideration and consultation required for the Government to provide a reasoned and specific articulation of the law enforcement concerns at issue here.

5. Pursuant to Local Rule 7(m), undersigned counsel has conferred with counsel for BuzzFeed, who advises that BuzzFeed consents to an extension only up to March 13, because of the current March 15 discovery deadline in the underlying defamation action. However, BuzzFeed has requested an extension of the March 15 discovery deadline, up to June 15, 2018. *See Gubarev*

*v. BuzzFeed*, No. 17-cv-60426 (S.D. Fla.), ECF No. 145 (Joint Status Report), at 6.<sup>1</sup> In support of its request for an extension of discovery, BuzzFeed cited not only the miscellaneous action pending before this Court, but also other ongoing non-party and party discovery. *See id.* at 4 (discussing motion to compel before this Court; noting that BuzzFeed has at least one other motion to compel, involving non-party subpoena of the Democratic National Committee, that will not be fully briefed until March 23, 2018; and stating that BuzzFeed has at least one other outstanding non-party subpoena that has yet to be returned and may serve other additional non-party subpoenas in the future). Given the number of unresolved discovery issues in BuzzFeed's defamation action, the additional six days requested by the Government (beyond the extension to which BuzzFeed consents) are unlikely to prejudice BuzzFeed in this or the Florida matter.

\* \* \*

For the foregoing reasons, the Government respectfully requests that this Court order that its supplemental declaration in support of the Government's assertion of the law enforcement privilege be due on March 19, 2018.

Respectfully submitted this 27<sup>th</sup> day of February, 2018,

CHAD A. READLER  
Acting Assistant Attorney General

JACQUELINE COLEMAN SNEAD  
Assistant Branch Director

/s/ Anjali Motgi  
ANJALI MOTGI (TX Bar # 24092864)  
Trial Attorney

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<sup>1</sup> BuzzFeed's request for an extension of discovery is likely to be discussed at the status conference set by the Florida Court for tomorrow. *See Gubarev v. BuzzFeed*, No. 17-cv-60426 (S.D. Fla.), ECF No. 143 (Order of Judge Ungaro setting status conference for February 28, 2018, at 11:30 a.m.). Counsel for BuzzFeed informs undersigned counsel that if Judge Ungaro were to grant BuzzFeed's proposed discovery extension, BuzzFeed would consent to the Government's full extension (until March 19) requested here.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2018, a copy of the foregoing pleading was filed electronically via the Court's ECF system which sent notification of such filing to counsel of record for all parties.

/s/ Anjali Motgi  
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**[PROPOSED] ORDER GRANTING DEFENDANTS'  
MOTION FOR EXTENSION OF TIME**

Upon consideration of the Defendants' Motion for Extension of Time to File Supplemental Declaration, and for good cause shown, it is hereby:

ORDERED that the Motion is GRANTED. Defendants shall file their supplemental declaration in support of the Government's assertion of the law enforcement privilege by March 19, 2018.

SO ORDERED.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
*The Honorable Amit P. Mehta*  
UNITED STATES DISTRICT JUDGE