

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF MASSACHUSETTS  
SUFFOLK SUPERIOR COURT  
SUCR2014-10417; SUCR2015-  
10384

COMMONWEALTH

v.

AARON HERNANDEZ

**DEFENDANT'S MOTION FOR THIRD PARTY RECORDS**  
**RE: SECURUS TECHNOLOGIES, INC.**

Now comes the Defendant in the above-entitled matter and respectfully moves this Honorable Court, pursuant to Massachusetts Rules of Criminal Procedure 17(a)(s) and the law and process of Commonwealth v. Dwyer, 448 Mass. 122 (2006) and Commonwealth v. Lampron, 441 Mass. 265 (2004), to:

1. Authorize a subpoena of Securus Technologies, Inc. to produce within 30 days of this Court's Order any and all documents referenced in **Exhibit 7** attached hereto.<sup>1</sup> See Mass. R. Crim. P. 17(a)(2).

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<sup>1</sup> In a civil action filed by Hernandez, Aaron Hernandez v. Securus Technologies, Inc., Complaint, Case No. 1:16-cv-12402-RGS (S.D. MA. November 25, 2016) the parties to that action filed on Dec. 6, 2016 a request for a Stipulated Order for Preliminary Injunction to preserve the records in substantially the same form as **Exhibit 7** attached hereto and referenced in paragraphs C and D

2. Compel Securus Technologies, Inc., 4651 Dallas Parkway, Suite 600, Dallas, TX 75254-8815 to designate and produce a witness or witnesses, who has/have the most knowledge of the documents and information produced pursuant to **Exhibit 7**, to testify under oath at a hearing to be scheduled by the Court. See Mass. R. Crim. P. 17(a)(1).

#### THE BREACH

In support thereof, and as has been widely reported by the news media, the Defendant had his jailhouse phone calls tapped by an unknown person while awaiting trial in a previous criminal case in Bristol County.<sup>2</sup> According to news reports, detainee and inmate phone calls are recorded and stored on a database maintained by Securus Technologies, Inc., a for-profit prison technology company. In or around the summer of 2014, the security of this database was

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above except the requested order hereunder seeks Securus to produce not just preserve the enumerated material.

<sup>2</sup> See, e.g., Bob McGovern, Aaron Hernandez's jailhouse phone calls tapped during first murder trial, authorities say, Boston Herald (Oct. 28, 2016), [http://www.bostonherald.com/news/local\\_coverage/2016/10/aaron\\_hernandezs\\_jailhouse\\_phone\\_calls\\_tapped\\_during\\_first\\_murder\\_trial](http://www.bostonherald.com/news/local_coverage/2016/10/aaron_hernandezs_jailhouse_phone_calls_tapped_during_first_murder_trial); Bob McGovern, After phone monitoring revelation, Hernandez lawyer eyes possible retrial motion, Boston Herald (Oct. 28, 2016), [http://www.bostonherald.com/news/local\\_coverage/2016/10/after\\_phone\\_monitoring\\_revelation\\_hernandez\\_lawyer\\_eyes\\_possible\\_retrial](http://www.bostonherald.com/news/local_coverage/2016/10/after_phone_monitoring_revelation_hernandez_lawyer_eyes_possible_retrial). **See attached Exhibit "1".**

breached, and an unknown person obtained unauthorized access to recordings of Mr. Hernandez's calls. Undersigned counsel was never told of the improper access to Mr. Hernandez's telephone calls, even though the Suffolk County Sheriff's Department had knowledge of the breach. According to a Sheriff's Department spokesperson, the Sheriff's Department first "discovered that Securus' telephone database had been accessed for calls relating to detainee Hernandez" "[d]uring a routine security check" performed by its Investigative Division.<sup>3</sup> However, defense counsel only learned of the problem through recent media reports.<sup>4</sup>

The breach of defendant's phone security was reported in connection with reports of a massive breach of security at Securus Technologies between 2011 and 2014, which exposed over 70 million records of phone calls placed by prisoners in at least 37 states, including downloadable recordings of calls.<sup>5</sup>

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<sup>3</sup> See McGovern, Aaron Hernandez's jailhouse phone calls tapped, supra attached as **Exhibit "1"**.

<sup>4</sup> Therefore, the discovery sought in this motion "could not reasonably have been requested or obtained prior to the conclusion of the pretrial hearing[.]" Mass. R. Crim. P. 13(d)(1)(A).

<sup>5</sup> See Jordan Smith & Micah Lee, Not So Securus: Massive Hack of 70 Million Prisoner Phone Calls Indicates Violations of Attorney-Client Privilege, The Intercept (Nov. 11, 2015), <https://theintercept.com/2015/11/11/securus-hack-prison-phone->

## RECORDING OF ATTORNEY-CLIENT PRIVILEGED CALLS

While Attorney-Client calls are allegedly not recorded or preserved,<sup>6</sup> at least 14,000 recorded conversations between prisoners and attorneys were among the files in the Securus breach,<sup>7</sup> indicating habitual violations of the Attorney-Client privilege unprecedented in size and scope.

Such recordings have been occurring even though Attorneys have registered their telephone numbers in accordance with the Securus protocol managed by the respective correctional facility allegedly exempting such calls from recording.<sup>8</sup> In Romero v. Securus

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company-exposes-thousands-of-calls-lawyers-and-clients/, attached as **Exhibit "2"**.

<sup>6</sup> See McGovern, Aaron Hernandez's jailhouse phone calls tapped, supra, attached as **Exhibit "1"**.

<sup>7</sup> See Smith & Lee, supra. **Exhibit "2"**.

<sup>8</sup> See, e.g., Jonathan Shoreman, Federal judge chides prosecutors in Leavenworth CCA recording controversy: "You all need to get your act together", The Topeka Capital-Journal (Sept. 7, 2016), <http://cjonline.com/news-state/2016-09-07/federal-judge-chides-prosecutors-leavenworth-cca-recording-controversy-you-all> attached as **Exhibit "3"**.

See also Romero v. Securus Technologies, Inc., Complaint, Case No. 16-cv-1283-JM-MDD (S.D. Cal. November 7, 2016) attached as **Exhibit "4"**

See also USA v. Lorenzo Black, et al., Case No.16-20032 (D. Kan. 2016).

Technologies, Inc., Complaint, Case No. 16-cv-1283-JM-MDD (S.D. Cal. November 7, 2016), cited in footnote 7 **Exhibit "5"**, at paragraph 69 pg. 17, and generally pgs. 9-16, a California Public Records request led to the release of 2,330 emails between the San Diego Sheriff's office and Securus establishing that Attorney-Client privileged communications were being recorded even though the Attorney numbers were placed on the do not record list. Similarly, in an ongoing criminal matter in the U.S. District Court, District Of Kansas, USA v. Lorenzo Black, et al., Case No.16-20032 (D. Kan. 2016) an Exhibit No. 449 filed by the Defense indicates 74 Attorney-Client privileged calls were recorded. **Exhibit "5"**. A Special Master was appointed by the Court in USA v. Lorenzo Black to examine recordings of Attorney-Client privileged material in the possession of the correctional facility and US Attorney. The Master is expected to report his findings this month to the Court in that matter.

#### **ACCESS TO THE RECORDINGS**

Defendant and his counsel are not aware, at this juncture, who had access to Defendant's phone calls

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including potentially Attorney-Client privileged calls without further inquiry. The following exchange between a Seattle, WA correction's official and Securus illustrates the broad access to Securus's recordings.

Contained within the release of emails posted to the same site as the above 2,330 emails were emails dated June 25, 2015 between a Captain Eric Urie, Internal Investigations Unit, Department of Adult and Juvenile Detention (Jail) Seattle, WA and Jeffrey Ollar, On-site Administrator for Securus, Dallas, Texas. Urie wrote, "...I am trying to get a clearer understanding of what levels of access our system has, what specifically each level of access can do in the system, and who has each level." In response Ollar provided a description of the levels of access to prisoners' telephone calls and, page after page of individuals including 82 detectives. With respect to the access by detectives Ollar writes, "These users have a wide access to calls,...". **Exhibit "6"**.

The requested records and testimony will contain relevant and material information that will assist the defense to ascertain what information was obtained and possibly shared to ensure that Mr. Hernandez's

Attorney-Client privilege was not violated while he was in the Commonwealth's custody.

The Defendant further states that the four requirements of Lampron and Dwyer are clearly met: (1) the documents are evidentiary and relevant; (2) they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend to unreasonably delay the trial; and (4) the application is made in good faith and is not intended as a general "fishing expedition." Lampron at 269, quoting United States v. Nixon, 418 U.S. 683, 699-700 (1974); Dwyer, supra at 141-142.

The Defendant also states that denial of this motion would result in the deprivation of his rights to present a defense, violate his Due Process rights, hinder effective assistance of counsel, and prevent a fair trial as guaranteed by the U.S. Constitution and the Massachusetts Declaration of Rights.

Respectfully Submitted on behalf  
of Aaron Hernandez, by his  
attorneys,



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Dated: December 6, 2016



CERTIFICATE OF SERVICE

I hereby certify this 6<sup>th</sup> day of December 2016 that a true copy of the within *Defendant's Motion for Third Party Records RE: Securus Technologies, Inc.* was sent via First Class Mail, postage prepaid, and by email to all counsel of record as follows:

**DEFENDANT'S MOTION FOR THIRD PARTY RECORDS RE: SECURUS  
TECHNOLOGIES, INC.**

Daniel F. Conley, Esq.  
Patricia M. Haggan, Esq.  
Teresa K. Anderson, Esq.  
Janis Dimoreto Smith, Esq.  
One Bulfinch Place  
Boston, MA 02114



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Jose Baez, Esq.

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COMMONWEALTH

v.

AARON HERNANDEZ

**AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR THIRD  
PARTY RECORDS: SECURUS TECHNOLOGIES, INC.**

I, Ronald S. Sullivan, Jr., do hereby depose and state that the following is true to the best of my knowledge, understanding, and belief:

- 1) I am an attorney for Aaron Hernandez in the above-referenced matter practicing under pro hac vice.
- 2) It has been widely reported by the news media that the Defendant had his jailhouse phone calls tapped by an unknown person while awaiting trial in a previous criminal case in Bristol County.<sup>1</sup> According

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<sup>1</sup> See, e.g., Bob McGovern, Aaron Hernandez's jailhouse phone calls tapped during first murder trial, authorities say, Boston Herald (Oct. 28, 2016), [http://www.bostonherald.com/news/local\\_coverage/2016/10/aaron\\_hernandezs\\_jailhouse\\_phone\\_calls\\_tapped\\_during\\_first\\_murder\\_trial](http://www.bostonherald.com/news/local_coverage/2016/10/aaron_hernandezs_jailhouse_phone_calls_tapped_during_first_murder_trial); Bob McGovern, After phone monitoring revelation, Hernandez lawyer eyes possible retrial motion, Boston Herald (Oct. 28, 2016), [http://www.bostonherald.com/news/local\\_coverage/2016/10/after\\_phone\\_monitoring\\_revelation\\_hernandez\\_lawyer\\_eyes\\_possible\\_retrial](http://www.bostonherald.com/news/local_coverage/2016/10/after_phone_monitoring_revelation_hernandez_lawyer_eyes_possible_retrial).<sup>7</sup>

to news reports, detainee and inmate phone calls are recorded and stored on a database maintained by Securus Technologies, Inc., a for-profit prison technology company. In or around the summer of 2014, the security of this database was breached, and an unknown person obtained unauthorized access to recordings of Mr. Hernandez's calls. Undersigned counsel was never told of the improper access to Mr. Hernandez's telephone calls, even though the Suffolk County Sheriff's Department had knowledge of the breach. According to a Sheriff's Department spokesperson, the Sheriff's Department first "discovered that Securus' telephone database had been accessed for calls relating to detainee Hernandez" "[d]uring a routine security check" performed by its Investigative Division.<sup>2</sup> However, defense counsel only learned of the problem through recent media reports.<sup>3</sup>

3) The breach of Defendant's phone security was reported in connection with reports of a massive

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<sup>2</sup> See McGovern, Aaron Hernandez's jailhouse phone calls tapped, supra.

<sup>3</sup> Therefore, the discovery sought in this motion "could not reasonably have been requested or obtained prior to the conclusion of the pretrial hearing[.]" Mass. R. Crim. P. 13(d)(1)(A).

breach of security at Securus Technologies between 2011 and 2014, which exposed over 70 million records of phone calls placed by prisoners in at least 37 states, including downloadable recordings of calls.<sup>4</sup>

4) While Attorney-Client calls are allegedly not recorded or preserved,<sup>5</sup> at least 14,000 recorded conversations between prisoners and attorneys were among the files in the Securus breach,<sup>6</sup> indicating habitual violations of the Attorney-Client privilege unprecedented in size and scope. Such recordings have been occurring even though Attorneys have registered their telephone numbers in accordance with the Securus protocol managed by the respective correctional facility allegedly exempting such calls from recording.<sup>7</sup> In Romero v. Securus Technologies,

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<sup>4</sup> See Jordan Smith & Micah Lee, Not So Securus: Massive Hack of 70 Million Prisoner Phone Calls Indicates Violations of Attorney-Client Privilege, The Intercept (Nov. 11, 2015), <https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients/>.

<sup>5</sup> See McGovern, Aaron Hernandez's jailhouse phone calls tapped, *supra*.

<sup>6</sup> See Smith & Lee, *supra*.

<sup>7</sup> See, e.g., Jonathan Shoreman, Federal judge chides prosecutors in Leavenworth CCA recording controversy: "You all need to get your act together", The Topeka Capital-Journal (Sept. 7, 2016), <http://cjonline.com/news-state/2016-09-07/federal-judge-chides-prosecutors-leavenworth-cca-recording-controversy-you-all>.

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See also USA v. Lorenzo Black, et al., Case No.16-20032 (D. Kan. 2016).

<sup>8</sup> See Exhibit 5

5) Defendant and his counsel are not aware, at this juncture, who had access to Defendant's phone calls including potential Attorney-Client privileged calls without further inquiry. The following exchange between a Seattle, WA correction's official and Securus illustrates the broad access to Securus's recordings.

6) Contained within the release of emails posted to the same site as the above 2,330 emails were emails dated June 25, 2015 between a Captain Eric Urie, Internal Investigations Unit, Department of Adult and Juvenile Detention (Jail) Seattle, WA and Jeffrey Ollar, On-site Administrator for Securus, Dallas, Texas. Urie wrote, "...I am trying to get a clearer understanding of what levels of access our system has, what specifically each level of access can do in the system, and who has each level." In response Ollar provided a description of the levels of access to prisoners telephone calls and page after page of individuals including 82 detectives. With respect to the access by detectives Ollar writes, "These users have a wide access to calls,...".<sup>9</sup>

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<sup>9</sup> See Exhibit 6

7) The requested records and testimony will contain relevant and material information that will assist the defense to ascertain what information was obtained and possibly shared to ensure that Mr. Hernandez's Attorney-Client privilege was not violated while he was in the Commonwealth's custody.

SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY  
THIS 6th DAY OF DECEMBER 2016.

A handwritten signature in dark ink, appearing to read "Raf32", is written above a horizontal line.

Ronald S. Sullivan, Jr.