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APR 23 2018

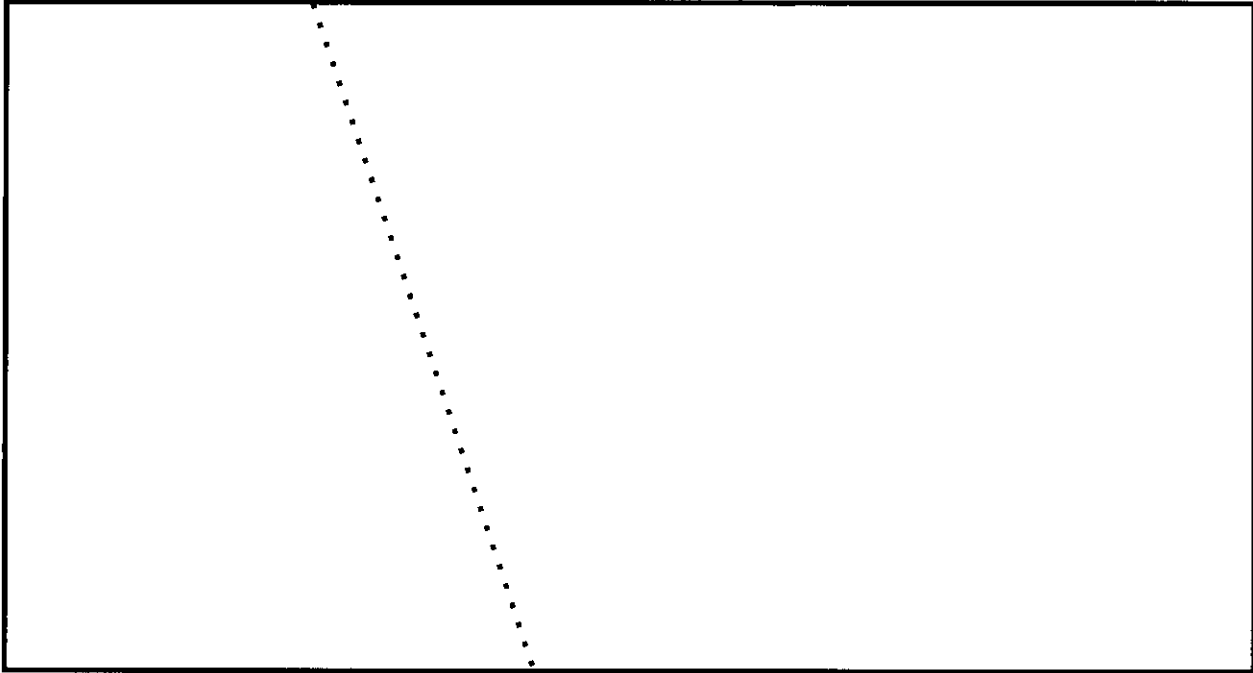
LeeAnn Flynn Hall, Clerk of Court

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(b) (3) - 50 USC 3024 (i)

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.



ORDER APPOINTING AMICI CURIAE

For the reasons set out below, the Court appoints Jonathan G. Cedarbaum, Esq. and Amy Jeffress, Esq. to serve as amici curiae in the above-captioned matters for the purpose of assisting the Court in considering the issues specified herein. Those appointments are made pursuant to section 103(i)(2)(A) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA), codified at 50 U.S.C. § 1803(i)(2)(A). This Order also addresses certain administrative matters relating to amici participation.

Background

b3,7E (per FBI)



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b3,7E (per FBI)



The government had submitted versions of the 2018 Certifications in draft form between

b3,7E (per FBI)



After reviewing those drafts, the Court concluded that “this-

matter is likely to present one or more novel or significant interpretations of the law, which

would require the Court to consider appointment of an amicus curiae. Indeed, the Court expects

its deliberations would benefit from amicus involvement.” See



b3,7E (per FBI)



The

Court further noted that the 30-day review period specified by section 702(j)(1)(B) would, as a practical matter, foreclose amicus participation. Id. at 3.

The Court may, however, extend that 30-day review period “as necessary for good cause in a manner consistent with national security.” § 702(k)(2). To help the Court decide “whether, and how much, to extend the time it would have to act on the 2018 Certifications and procedures in order to allow meaningful amicus assistance,” the Court ordered the government to “explain in writing whether – and if so, how long – an extension of time for the Court to review the 2018 Certifications and procedures would be consistent with national security.” March 20 Order at 3.

On March 26, 2018, the government timely filed a response to that Order, which advised that “the government assesses that an extension of 90 days . . . would be consistent with national

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security.” [redacted] Government’s Response to the Court’s Order of March 20, 2018 (“March 26 Response”), at 6.

On April 5, 2018, the Court found that “the need for an extension to allow for [amicus] participation constitutes ‘good cause’” for an extension under section 702(k)(2). See [redacted]

[redacted] and predecessor dockets, Order issued on April 5, 2018, at 3. Accordingly, it extended “the period for Court review under section 702(j)(1)(B) by 90 days” – that is, “through July 25, 2018.” Id.

Appointment of Amici Curiae

Pursuant to section 103(i)(1), the Presiding Judges of this Court and the Foreign Intelligence Surveillance Court of Review have designated individuals whose qualifications “may lend legal or technical expertise” to either court and “who are determined to be eligible for access to classified information necessary to participate in matters before the courts.” Section 103(i)(3)(A), (B). Pursuant to section 103(i)(2)(A), the court “shall appoint” to serve as amicus curiae an individual who has been designated under section 103(i)(1) “to assist . . . in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate.”

Given the number and complexity of issues presented in this case and applicable time constraints, the Court finds it appropriate to appoint as amici curiae two individuals who have been designated under section 103(i)(1): Jonathan G. Cedarbaum and Amy Jeffress, both of whom are well qualified to assist the Court in considering the issues specified herein. The Court intends for them to work together and submit a joint brief on those issues pursuant to the schedule set forth below. In the event Mr. Cedarbaum and Ms. Jeffress determine they require

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assistance in order to serve effectively as amici, they are invited to identify individuals with relevant expertise and the required security clearances and request, pursuant to section 103(i)(5), that the court appoint such individuals as additional amici pursuant to section 103(i)(2)(B) to be available to assist Mr. Cedarbaum and Ms. Jeffress.

Accordingly, it is HEREBY ORDERED as follows:

(1) Jonathan G. Cedarbaum and Amy Jeffress are appointed as amici curiae in this matter pursuant to section 103(i)(2)(A).

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(2) The amici are directed to address the following issues:

(a) Do the pre-conditions on acquiring "abouts communications" imposed by section 103(b) of the FISA Amendments Reauthorization Act of 2017, Public Law 115-118, 132 Stat. 3, apply only to forms of acquisition that the government discontinued under Section 702 in March 2017?

(b) If the answer to (a) is "no," do any forms of acquisition to be conducted under the 2018 Certifications involve acquisition of abouts communications, with particular consideration of [redacted]

[redacted]

(c) Are the Querying Procedures consistent with the requirements of the Fourth Amendment, with particular consideration of:

(i) the exemptions in section III, in conjunction with the definition of "query" at section V.A; and

(ii) the provisions of section VII, as applied to queries intended to retrieve evidence of a crime that is not foreign intelligence information?

(d) Are the record-keeping provisions of the Querying Procedures consistent with the requirements of § 702(f)(1)(B) and the Fourth Amendment, with particular consideration of:

(i) FBI records that do not specify whether the recorded query terms are United States person query terms, see Querying Procedures § VII n.5;

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(ii) FBI use of United States person query terms without any statement of facts showing that the use of those terms is reasonably likely to retrieve foreign intelligence information or evidence of a crime; and

(iii) the circumstances under which section IV of the procedures permits agency personnel to use a U.S. person query term without “an electronic record” being created and maintained?

(e) Are the following provisions of the respective agencies’ Minimization Procedures consistent with the definitions of “minimization procedures” at sections 101(h) and 301(4) of FISA, as appropriate (codified at 50 U.S.C. § 1801(h) and § 1821(4) respectively), and with the requirements of the Fourth Amendment: NSA Minimization Procedures § 1; FBI Minimization Procedures §§ I.G., I.H, III.F.5, III.F.6; CIA Minimization Procedures §§ 6.g, 6.h; and NCTC Minimization Procedures §§ A.6.f, A.6.g?;

(3) Pursuant to section 103(i)(6)(A)(i), the Court has determined that the materials identified in Exhibit A (attached hereto) are relevant to the duties of the amici. By May 1, 2018, or after receiving confirmation from the Security and Emergency Planning Staff (SEPS) of the United States Department of Justice that an amicus has received the appropriate clearances and access approvals for such materials, whichever is later, the Clerk of the Court shall make the materials identified in Exhibit A available to each amicus, including such additional amici as the Court may appoint to assist Mr. Cedarbaum and Ms. Jeffress;

(4) With the guidance and assistance of SEPS, the amici shall handle classified information in accordance with the Security Procedures Established Pursuant to Public Law No. 95-511, 92 Stat. 1783, as Amended, By the Chief Justice of the United States for the Foreign Intelligence Surveillance Court And the Foreign Intelligence Surveillance Court of Review (Feb. 21, 2013) (“Security Procedures”) (copy attached at Exhibit B). For purposes of the Security Procedures, the amici shall be regarded as court personnel;

(5) Section 103(i)(6)(C) provides: “An amicus curiae designated or appointed by the court may have access to classified documents, information, and other materials or proceedings only if

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that individual is eligible for access to classified information and to the extent consistent with the national security of the United States.” The Court believes that, in this matter, the amici’s access to classified information pursuant to paragraphs (3) and (4) above is consistent with the national security of the United States. If, however, the government believes otherwise, it shall provide written notice and explanation to the Court by April 30, 2018;

(6) The following briefing schedule shall govern these proceedings:

(a) The government shall file a pleading setting forth [redacted] [redacted] to be conducted under the 2018 Certifications, the manner and circumstances of such collection, and the types of communications or other information the government expects to acquire by May 3, 2018;

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(b) Amici shall file their opening brief by May 31, 2018;

(c) The government shall file any responsive brief by June 15, 2018;

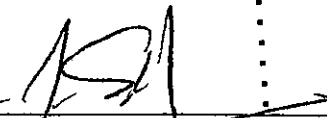
(d) Amici shall file any reply by June 29, 2018; and

(e) The Court, after consulting the government and amici, shall set oral argument for early July 2018.

The government’s submissions shall include copies of materials cited therein unless those materials are publicly available or identified in Exhibit A hereto.

ENTERED this 25th day of April 2018, in [redacted]

[redacted]


JAMES E. BOASBERG
Judge, United States Foreign
Intelligence Surveillance Court

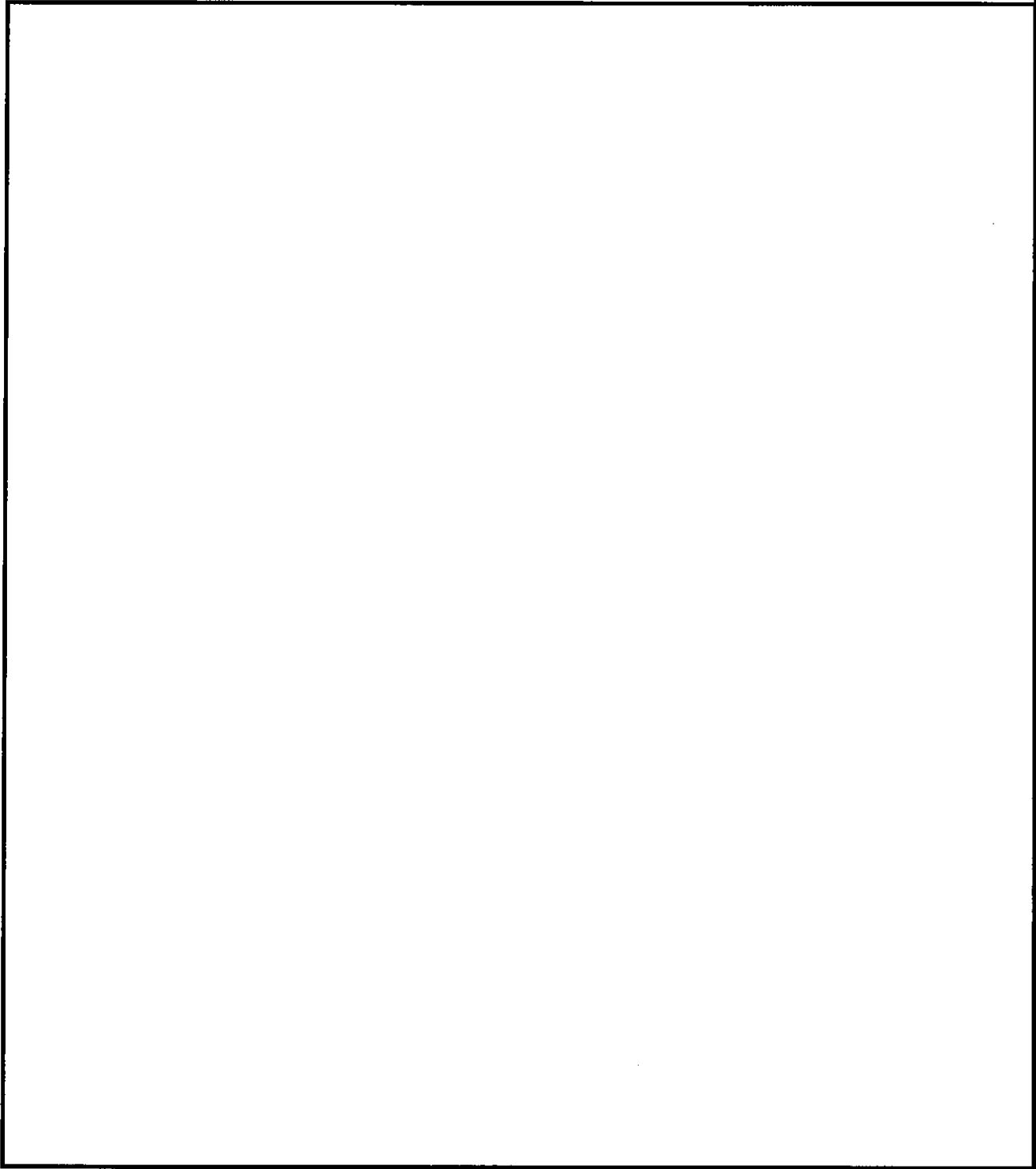
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6,7C [redacted] Deputy Clerk,
FISC, certify that this document
is a true and correct copy of the
original.
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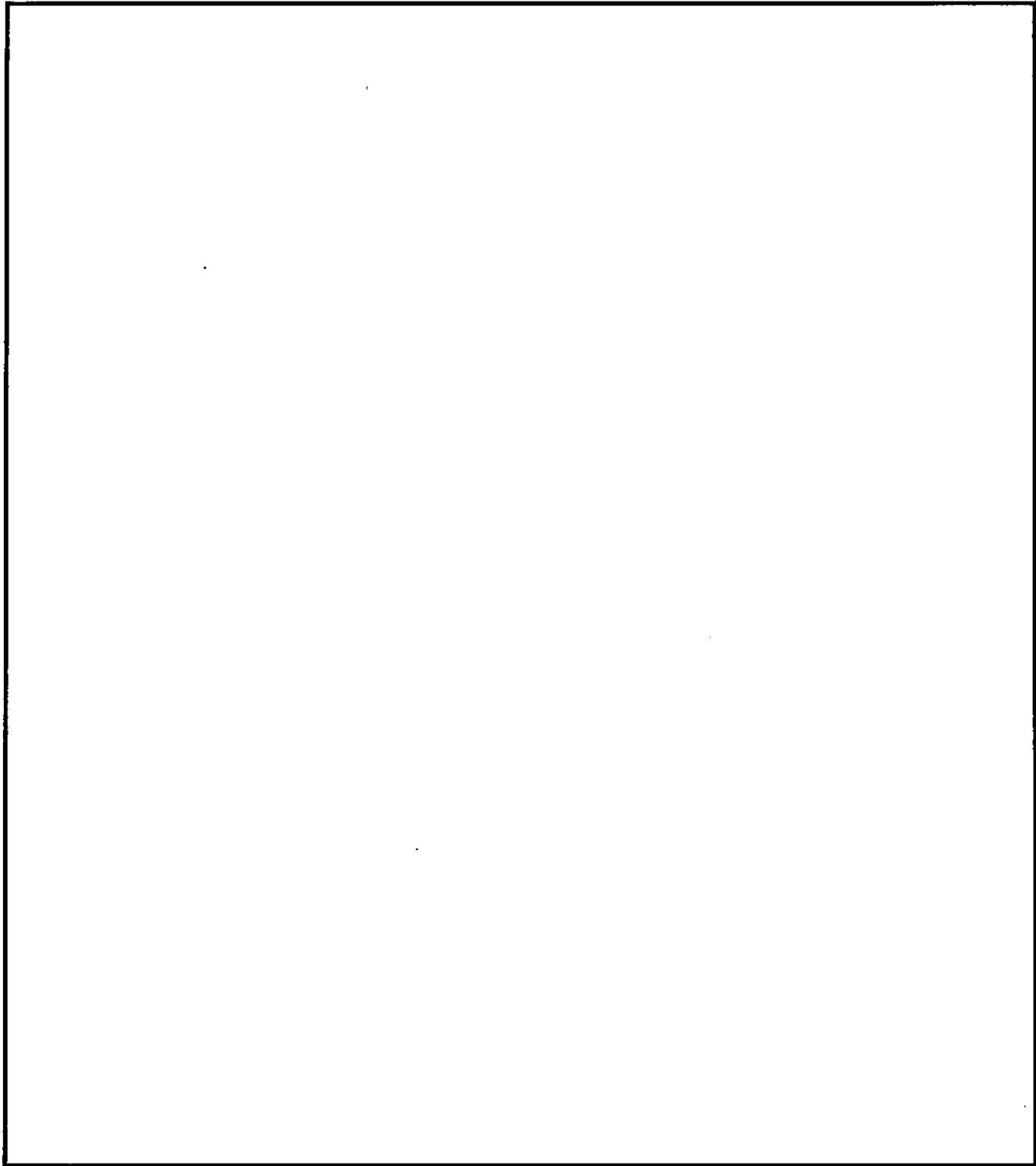
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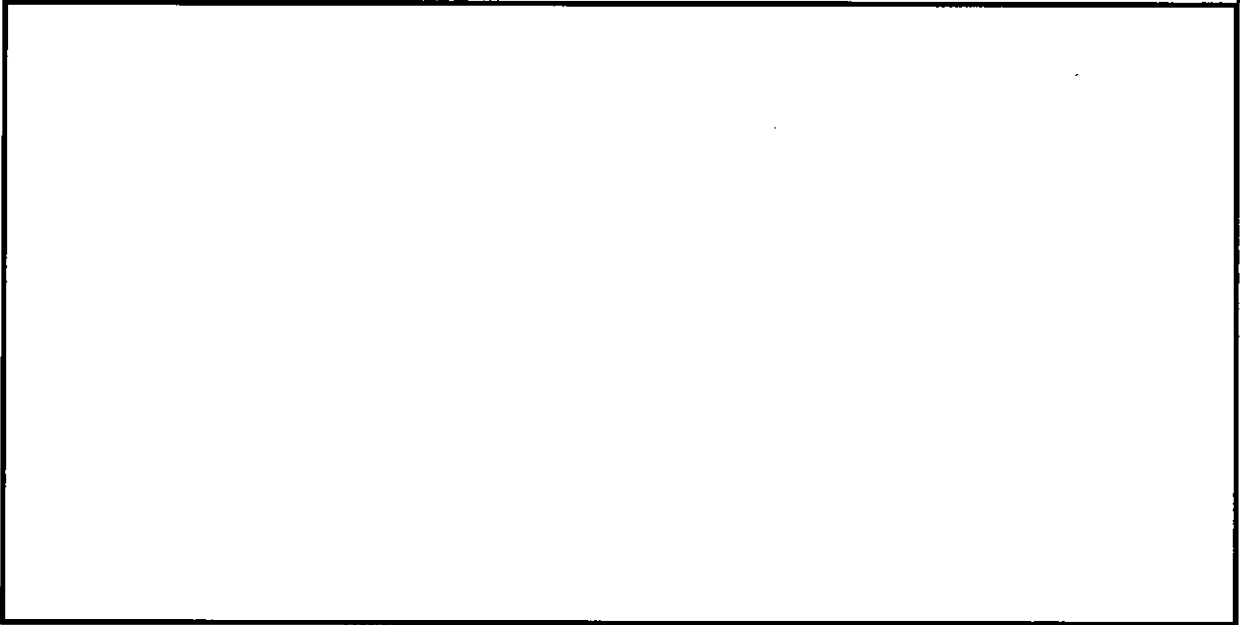
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Exhibit B

Security Procedures Established Pursuant to Public Law No. 95-511, 92 Stat. 1783, as Amended, By the Chief Justice of the United States for the Foreign Intelligence Surveillance Court And the Foreign Intelligence Surveillance Court of Review

1. *Purpose.* The purpose of these procedures, as revised, is to meet the court security requirements of the Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, 92 Stat. 1783, as amended ("the Act").¹ These security procedures apply to both the Foreign Intelligence Surveillance Court established under § 103(a) of the Act and the Foreign Intelligence Surveillance Court of Review established under § 103(b), and to all supporting personnel of said courts. Except for the judges of the two courts, the same facilities, personnel, and security procedures shall be used by both courts, subject to such exceptions as may be authorized by the Chief Justice. These procedures have been adopted in consultation with the Attorney General and the Director of National Intelligence as required by the Act and supersede the security procedures issued on May 18, 1979. The term "court" as used herein refers to both Courts.

2. *Quarters and Facilities.* The quarters and facilities of the court, including a hearing room, work chambers, and storage facilities for court records, shall be constructed and maintained in accordance with applicable construction standards pertaining to sensitive compartmented information facilities adopted by the Director of National Intelligence. The location of court facilities may be changed by the court from time to time in consultation with the Chief Justice, the Attorney General, and the Director of National Intelligence.

3. *Members of the Court.* Judges to be designated as members of the court pursuant to § 103 of the Act shall be subject, before designation, to an updated background investigation to be conducted by the Federal Bureau of Investigation under applicable Executive Branch standards for investigations performed in support of determinations of eligibility for access to sensitive compartmented information or other classified national security information, insofar as they may be deemed applicable to the court. If a question of suitability to serve on the court is raised at any time after initial appointment, the matter is to be referred to the Chief Justice, who may elect to consult with the Attorney General and the Director of National Intelligence regarding the security significance of the matter before taking such action as the Chief Justice deems appropriate.

4. *Appointment of Personnel.* The court may have a Clerk of Court and such other legal, administrative or support personnel as it may require. The court may also arrange for the services of a court reporter, as it deems appropriate. Such personnel may have access to court

¹ Section 103(c) of the Act reads in pertinent part: "The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence." See also § 302(e) (physical search proceedings); § 501(f)(4) (proceedings regarding the production of records or other tangible things); § 702(k)(1) (proceedings regarding certain acquisitions of foreign intelligence information).

records and proceedings, including sensitive compartmented information or other classified national security information contained therein, only as authorized by the court and only to the extent necessary to the performance of an official function. Personnel appointed by or designated for service to the court shall undergo appropriate background investigation by the Federal Bureau of Investigation under applicable Executive Branch standards for investigations performed in support of determinations of eligibility for access to sensitive compartmented information or other classified national security information. All court personnel having access to sensitive compartmented information or other classified national security information shall sign appropriate security agreements. If a question concerning the security clearance of court personnel is raised subsequent to appointment, the matter shall be referred to the court, which may consult with the Attorney General and the Director of National Intelligence regarding its security significance before taking such action as it deems appropriate.

5. *Security Officer.* The court shall designate as security officer the Director, Security and Emergency Planning Staff, Department of Justice, or another individual who has demonstrated competence in providing security for classified national security information and sensitive compartmented information from among candidates submitted by the Attorney General and the Director of National Intelligence. One or more alternate security officers may be designated by the court as required. The security officer shall serve at the pleasure of the court and will not be subject to removal by the Executive Branch without the concurrence of the court. The security officer (and alternates) may be Executive Branch employees and may perform other duties in the Executive Branch, so long as such duties do not conflict with their responsibilities to the court. Additional personnel may be provided by the Department of Justice to perform incidental security and administrative functions for the court provided appropriate security clearances have been obtained.

The security officer shall be responsible to the court for document, physical, personnel, and communications security. Under the supervision of the court, the security officer shall take measures reasonably necessary to fulfill these responsibilities. The security officer shall arrange, at a minimum, for an annual security review of court quarters and facilities and shall submit a report to the court.

6. *Security Functions of the Clerk of Court.* The Clerk of Court, with the advice and concurrence of the security officer, shall establish and maintain a control and accountability system for all records of proceedings before the court that involve classified national security information, and any other records or documents the court may designate. The Clerk, in consultation with the security officer, shall further ensure that all court records are marked with appropriate security classifications in accordance with Executive Order 13526 and its successors, and procedures to be established by the court.

7. *Court Proceedings.* The court shall ensure that all court records (including notes, draft opinions, and related materials) that contain classified national security information are maintained according to applicable Executive Branch security standards for storing and handling

classified national security information. Records of the court shall not be removed from its premises except in accordance with the Act, applicable court rule, and these procedures. Insofar as the court may direct, the Clerk of the Court may, in coordination with the security officer, arrange for off-site storage of court records, provided that classified national security information contained therein is maintained according to the above-referenced security standards. Reports and exhibits submitted in support of applications to the court may be returned by the court to the applicant on a trust receipt basis.

Whenever a party other than the government makes a submission to the court that potentially contains classified national security information, the court shall promptly coordinate with the security officer to determine whether the submission contains classified national security information. The security officer shall, as directed by the court, consult with appropriate executive branch officials with regard to such a determination. The court may consider the submission while such a determination is pending, provided that the court safeguards the information in question as classified national security information in accordance with these procedures. The security officer shall, after consulting with the court, advise the parties of the results of the determination. If it is determined that the submission does contain classified national security information, the security officer shall ensure that it is marked with appropriate classification markings and the Clerk of Court shall ensure that it is handled in accordance with those markings under these procedures.

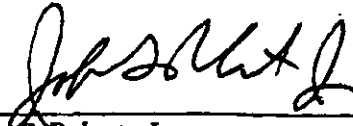
8. *Security Procedures for Section 102(a) and Section 302(a).* Certifications transmitted by the Attorney General to the court under seal pursuant to Section 102(a) or Section 302(a) of the Act shall be numbered in sequence by the Clerk of Court, who shall maintain a record of all certifications received by the designated number and date of receipt.

Certifications received by the court for retention only shall be filed under seal in separate storage compartments. They shall only be accessed jointly by a representative designated by the court and a representative of the Executive Branch designated by the Attorney General. They may be unsealed only in accordance with the provisions of the Act.

9. *Training.* Members of the court and court personnel shall be briefed on security measures appropriate to the functions of the court by designees of the Attorney General and the Director of National Intelligence.

10. *Term.* These procedures shall remain in effect until modified in writing by the Chief Justice after consultation with the Attorney General and the Director of National Intelligence.

Issued this 21st day of FEBRUARY, 2013, after consultation with the Attorney General of the United States and the Director of National Intelligence as required by the Foreign Intelligence Surveillance Act.



John G. Roberts, Jr.
Chief Justice of the United States

The Attorney General concurs in the procedures for safeguarding certifications filed under Section 102(a) or Section 302(a) of the Act, as set forth in paragraph 8.²



Eric H. Holder, Jr.
Attorney General of the United States

² Section 103(c) provides that the Chief Justice shall establish security procedures for the court in consultation with the Attorney General and the Director of National Intelligence. Sections 102(a)(3) and 302(a)(3) provide that certifications of the Attorney General issued in accordance with Section 102(a)(1) or Section 302(a)(1)(A) of the Act shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence.

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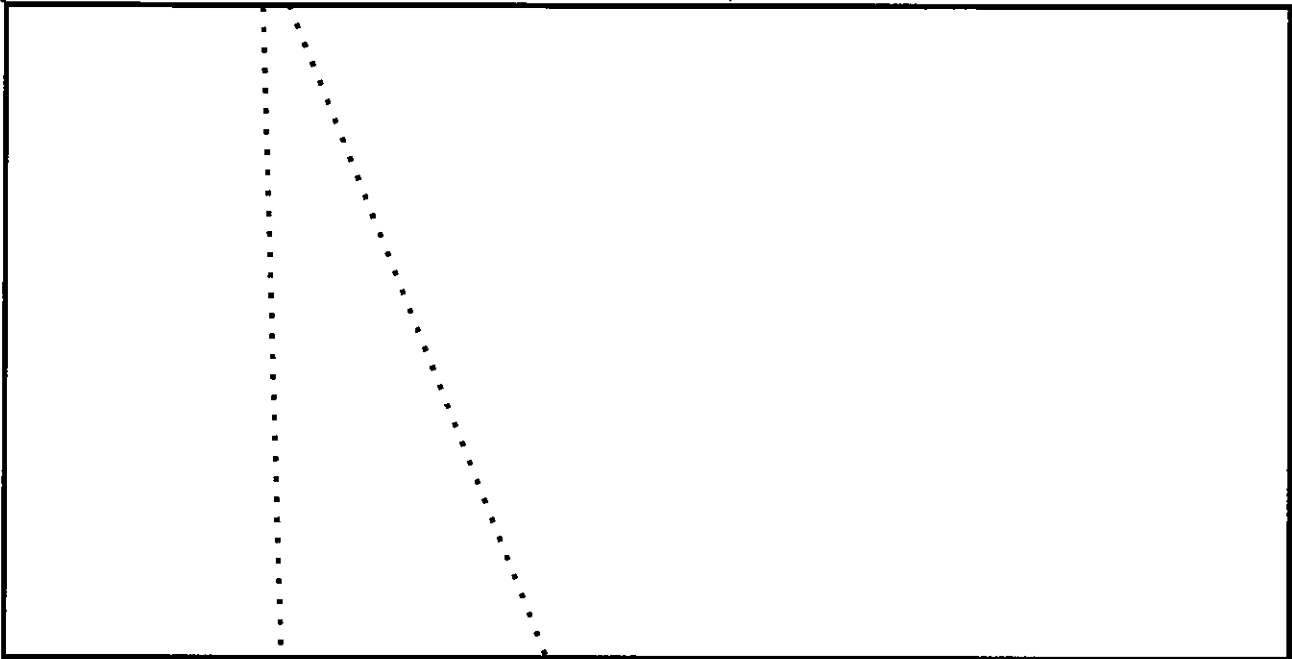
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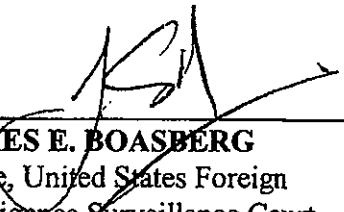
WASHINGTON, D.C.



ORDER

IT IS HEREBY ORDERED that the corrected Exhibit A attached hereto is substituted for the Exhibit A that accompanied this Court's Order Appointing Amici Curiae, issued on April 23, 2018, in the above-captioned dockets.

ENTERED this 24th day of April 2018, in



JAMES E. BOASBERG
Judge, United States Foreign
Intelligence Surveillance Court

I, b6,7C Chief Deputy Clerk,
FISC, certify that this document is a
true and correct copy of the original

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LeeAnn Flynn Hall, Clerk of Court

EXHIBIT A (as corrected on April 24, 2018)

Foreign Intelligence Surveillance Court of Review Materials

In re Directives, [redacted] Opinion issued on Aug. 22, 2008

Foreign Intelligence Surveillance Court Materials

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From [redacted]

Order Appointing Amici Curiae (to which this Exhibit A is attached)

Order issued on April 5, 2018

Government's filing on March 27, 2018, of its Ex Parte Submission Of Reauthorization Certifications and Related Procedures, Ex Parte Submission of Amended Certifications, and Request for an Order Approving Such Certifications and Amended Certifications (including Certifications [redacted] accompanying targeting, querying, and minimization procedures; and redline-strikeout versions of selected documents)

From [redacted]

Government's Ex Parte Submission of Amendments to DNI/AG 702(g) Certifications and Ex Parte Submission of Amended Targeting Minimization Procedures, filed on March 30, 2017

Order issued on March 20, 2018

Government's Response to the Court's Order of March 20, 2018, filed on March 26, 2018

From all predecessor 702(i) Dockets:

All Opinions or Orders approving or disapproving certifications, targeting procedures, and minimization procedures pursuant to Section 702(i)(3), including written statements of the reasons for such approval or disapproval

From [redacted]

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Government's 2015 Summary of Notable Section 702 Requirements and unclassified discussion of the Government's oversight efforts regarding Section 702 implementation, both filed on July 15, 2015

Government's Response to the Court's Briefing Order of Sept. 16, 2015, filed on Oct. 16, 2015

From

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Memorandum Opinion issued on Oct. 24, 2014

From

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[Redacted]

Opinion and Order issued on May 17, 2016

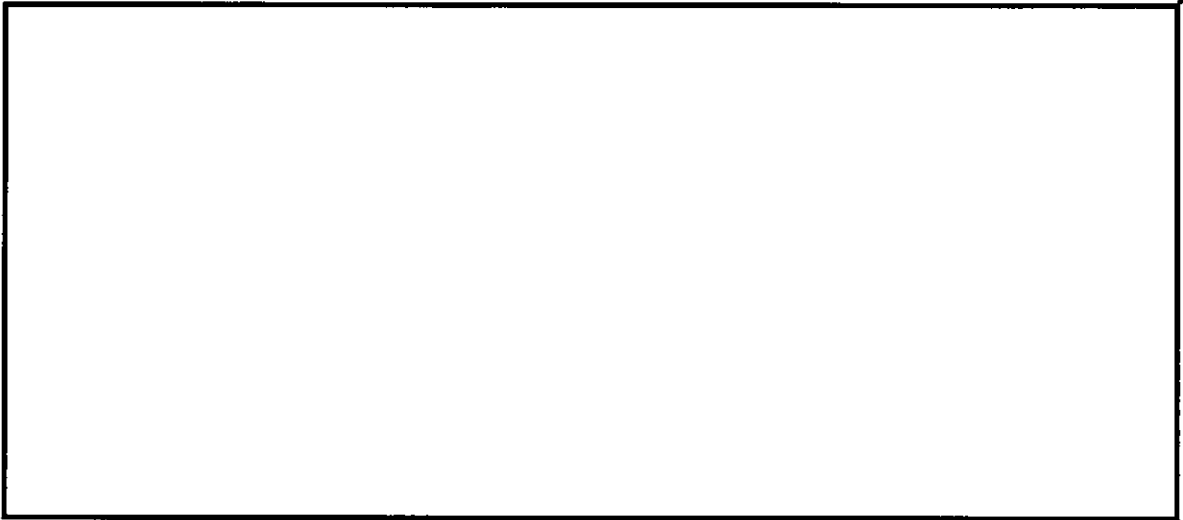
Other Materials:

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