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No. 18-1366

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

JAMSHID MUHTOROV,

Defendant-Appellant

On Appeal from the United States District Court
For the District of Colorado
District Court No. 1:12-cr-00033-JLK-1

~~CLASSIFIED~~ EX PARTE BRIEF FOR THE UNITED STATES

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I. (U) Introduction

(U) Muhtorov appeals the district court's denial of his motion to suppress evidence derived from Section 702 of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1881a. The government submits this classified, ex parte brief pursuant to this Court's order dated March 23, 2020, to assist this Court's review of the classified record.¹ In particular, this brief directs the Court to the portions of the classified record that support four principal conclusions: (1) the Section 702 collection in this case complied with the applicable targeting and minimization procedures, Section 702, and the Fourth Amendment; (2) the evidence in this case was not the fruit of any queries of Section 702 information using search terms associated with Muhtorov, even assuming *arguendo* that any such queries occurred; (3) the government did not use the Classified Information Procedures Act (CIPA) to withhold information that was material to any potential additional suppression claim; and (4) no evidence in the case was obtained or derived from acquiring Muhtorov's communications under Executive Order 12,333.

¹ ~~(TS//SI//NF)~~ The classified record includes materials submitted in response to Muhtorov's motion to suppress evidence derived from Section 702 (Doc. 569), including a classified brief ("Cl. Br.") and exhibits, which include the applicable targeting and minimization procedures and declarations from the intelligence agencies involved in the collection regarding their good-faith compliance with those procedures .

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[REDACTED]

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[REDACTED]

[REDACTED]

B. (U) Discussion

[REDACTED]

[REDACTED] The NSA's targeting procedures required the NSA to have a reasonable basis to believe that (1) the potential target was a non-U.S. person located outside the United States; and (2) the collection would result in acquiring foreign intelligence information. Here, the NSA reasonably assessed that both requirements were met. [REDACTED]

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[REDACTED] The collection here was therefore consistent with the applicable targeting procedures and Section 702. *See* 50 U.S.C. § 1881a(d)(1). The collection was also constitutionally reasonable. [REDACTED]

[REDACTED] Collecting communications from such an account, pursuant to Section 702 and court-approved procedures, is reasonable under the Fourth Amendment. *See United States v. Mohamud*, 843 F.3d 420, 441 (9th Cir. 2016). [REDACTED]

2. ~~(TS//SI//NF)~~ *The Government Lawfully Disseminated and Used the Section 702 Information*

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In such circumstances, it is reasonable for the government to review, query, and otherwise use information lawfully obtained under Section 702 to investigate a potential terrorist threat within the U.S. homeland. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴ Thus, the

⁴ [REDACTED] The district court reviewed the materials related to the FISA orders, from which evidence in the case was obtained, and found that those orders were lawful. Appellant's Add. 115-16. [REDACTED]

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government's acquisition, dissemination, and use of the Section 702-acquired information in this case were consistent with the applicable targeting and minimization procedures, the statutory requirements, and the Fourth Amendment.

[REDACTED]

[REDACTED] Muhtorov challenges (Br. 40-50) the government's alleged use of so-called "back door searches," *i.e.* querying databases containing Section 702 information using search terms associated with Muhtorov. However, Muhtorov's challenge is not presented on the facts of this case because the Section 702 communications that the government described in the FISA applications were not the fruit of any queries using search terms associated with Muhtorov. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Any such claim would be without merit, as the district court found.

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[REDACTED]

[REDACTED] The record therefore shows that the Section 702 information submitted to the FISC was not based on queries using terms associated with Muhtorov, [REDACTED]

[REDACTED]. Thus, the evidence Muhtorov sought to suppress was not obtained or derived from any queries associated with him. This Court, like the Ninth Circuit in *Mohamud*, can decide this case without addressing the merits of Muhtorov's challenge to such queries. *See Mohamud*, 843 F.3d at 442.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] There is therefore no causal link between any such queries and the acquisition of the evidence that Muhtorov seeks to suppress. *See Murray v. United States*, 487 U.S. 533, 542 (1988).

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, even if such queries are subject to an independent reasonableness analysis, the FBI had a reasonable basis for conducting such queries in this case.

[REDACTED] In these circumstances, it is not necessary for this Court to remand for further factfinding on queries. *See United States v. Hasbajrami*, 945 F.3d 641, 676-77 (2d Cir. 2019) (ordering a remand for that purpose). In *Hasbajrami*, the Second Circuit remanded because the record did not sufficiently establish the relationship between any querying and evidence that might have been used. *Id.* The court noted that (1) the defendant's guilty plea (and resulting lack of a trial) limited the reviewing court's ability to determine whether there might have been evidence potentially derived from queries; and (2) the district court addressed the querying issue in general rather than expressly analyzing what was done in that particular case. *Id.* at 669-70, 673-75. Here, by contrast, there was a trial, and this Court can determine that the only Section 702 information at issue (*i.e.* the communications included in the FISA applications through which the government obtained the only FISA-derived evidence used at trial) was not itself the product of querying Section 702 data using search terms associated with Muhtorov. *See Cl.*

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Br. 22-23. Moreover, the district court here focused closely on the FBI's FISA-related investigative steps, including ordering the government to produce a chronology of the relevant events. *See* Addendum A35-A42. [REDACTED]

[REDACTED] *See id.*; Cl. Br. 19, 22-23. Accordingly, Muhtorov's querying claim is not presented here. At a minimum, the good-faith exception to the exclusionary rule would apply, given that the government's actions described above were taken in good-faith reliance on procedures the FISC approved. *See Davis v. United States*, 564 U.S. 229, 236-39 (2011).

IV. (S//NF) Muhtorov's Speculation About Possible Misapplications of CIPA is Unfounded

(S//NF/FISA) There is no merit to Muhtorov's claim that the district court improperly relied on CIPA to withhold information concerning "novel surveillance techniques" other than collection under "traditional" FISA or Section 702 that would have supported an additional motion to suppress. *See* Gov't Br. 64-70. The classified CIPA materials confirm that Muhtorov's speculation about the nature of the information involved is unfounded.

[REDACTED] The CIPA proceedings focused on:

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

The first three categories do not relate to “novel surveillance techniques” and would not have supported any additional suppression claims Muhtorov might have raised. [REDACTED]

[REDACTED]

[REDACTED] That information likewise would not provide Muhtorov with grounds for any *additional* motions to suppress that he did not already raise.

V. ~~(TS//SI//NF)~~ **No Evidence in the Case Was Obtained or Derived from the Acquisition of Muhtorov’s Communications Pursuant to Executive Order 12,333**

[REDACTED] Muhtorov’s claim for disclosure under 18 U.S.C. § 3504 has no merit. *See* Gov’t Br. 60-64. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Respectfully submitted,

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[REDACTED]

⁵ See 18 U.S.C. § 3504 (limiting relief to “a party aggrieved”); see also *United States v. Williams*, 580 F.2d 578, 585 (D.C. Cir. 1978).

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(U) CERTIFICATE OF COMPLIANCE

(U) This classified, ex parte brief complies with the type-volume limitation set forth in this Court's March 23, 2020, order. This brief contains 2,984 words, according to the Microsoft Word software used, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

/s/ Joseph Palmer
JOSEPH PALMER
Attorney for the United States

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(U) ADDENDUM

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¹ (U) The documents in this classified addendum are reproduced from the government’s records, as the government does not currently have access to the classified record submitted to the district court.

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[REDACTED]

2. (U) The classification and control markings affixed to this declaration and each paragraph are made pursuant to the requirements of Executive Order 13526 and applicable regulations. The classification level of this declaration as a whole is the same as the highest classification level of information contained in any of its paragraphs. The overall classification of this document is TS//SI/NF. Each individual paragraph is portion-marked to indicate the classification of that paragraph: “(U)” for UNCLASSIFIED, “(S)” for SECRET, and “(TS)” for TOP SECRET. In addition to classified information, this declaration also references Special Intelligence (SI), which is a subcategory of Sensitive Compartmented Information (SCI), for which the Director of National Intelligence (DNI) imposes additional safeguards and access requirements. Finally, and in addition to the separate levels of classification markings defined by Executive Order 13526, there are also dissemination controls appropriately associated with classified information. Dissemination control markings identify the expansion or limitation on the distribution of the information. Not Releasable to Foreign Nationals, indicated by the abbreviation NOFORN or NF, is an explicit foreign release marking used to indicate that the information may not be released in any form to foreign governments, foreign nationals, foreign organizations, or non-US citizens without permission of the originator of the information.

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[REDACTED]

¹ (U) This declaration supports the Government's Classified Memorandum In Opposition to Defendants' Motion to Suppress Evidence Obtained or Derived from Surveillance Under the FISA Amendments Act and Motion for Discovery.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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~~TOP SECRET//SI//NOFORN~~

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

⁵ (U//FOUO) Internet Protocol is the primary network protocol used on the Internet and supports unique addressing for computers on a network. Internet Protocol address information allows for the delivery of packet information from the source host to the destination host. Because every device that connects to the Internet must use an Internet Protocol address, Internet Protocol address information may permit NSA to reasonably assess the location from which a particular facility was accessed.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 [REDACTED]

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[REDACTED]

11. (U//FOUO) Individual NSA analysts do not have the authority to unilaterally target individuals pursuant to Section 702. Rather, under NSA's Targeting Procedures, there is an internal review process that must be followed prior to a facility being tasked. *See e.g.* NSA Targeting Procedures § III at p. 8. After NSA initially documents the information that led to the reasonable belief that the individual is appropriate for targeting pursuant to Section 702, review of this determination and verification of information is required. The primary function of this review process is to ensure that Section 702 targeting requests satisfy NSA's Targeting Procedures. An NSA Targeting Adjudicator (a term used by NSA to distinguish the "reviewer" from a "nominating" analyst) must verify the accuracy of the information initially documented.⁸ The Adjudicator conducts further oversight by verifying that the information provided supports

⁷ [REDACTED]

⁸ (U) NSA Targeting Adjudicators are generally senior intelligence analysts that receive specific training in SIGINT targeting, in addition to targeting under the Section 702 program.

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[REDACTED]

[REDACTED]

⁹ (U) Prior to approval, and as required by its Targeting Procedures, NSA documented the information that led the analyst to make a reasonable belief assessment that the potential Section 702 target was a non-United States person located outside the United States and that NSA expected to obtain foreign intelligence information pursuant to the proposed targeting. NSA Targeting Procedures § III at p. 8.

¹⁰ [REDACTED]

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III. (U) Post-Targeting Analysis

[REDACTED]

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IV. (U) Conclusion

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9 May 2014.

[REDACTED]

Deputy Chief of Staff for
SIGINT Policy and Corporate Issues
Signals Intelligence Directorate

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ (U) This declaration supports the Government’s Classified Memorandum In Opposition to Defendants’ Motion to Suppress Evidence Obtained or Derived From Surveillance Under the FISA Amendments Act and Motion for Discovery.

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[REDACTED]

I. (U) FBI [REDACTED] Targeting Procedures

6. (S//NF) In relevant part, the FISC-approved FBI [REDACTED] Targeting Procedures address the process the FBI must follow before acquiring foreign intelligence information, [REDACTED] [REDACTED] from electronic communications accounts/addresses/identifiers designated by the NSA as being used by non-United States persons reasonably believed to be located outside the United States [REDACTED]. Pursuant to the FBI's [REDACTED] Targeting Procedures, the [REDACTED] against a [REDACTED] [REDACTED] pursuant to Section 702 may only occur after the NSA has first applied its targeting procedures to determine that the [REDACTED] is used by a target who is a non-United States person reasonably believed to be located outside the United States. *See* FBI Targeting Procedures § I.1. [REDACTED]

[REDACTED]

7. [REDACTED]

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[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED] the FBI [REDACTED]

[REDACTED] and will inform the NSA of its findings. See FBI

Targeting Procedures § I.8.

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II. [REDACTED] FBI [REDACTED] Minimization Procedures

10. [REDACTED] In relevant part, the FBI's [REDACTED] Minimization Procedures addressed the manner in which the FBI was able to [REDACTED] pursuant to Section 702. The FBI's [REDACTED] Minimization Procedures allowed the FBI [REDACTED] pursuant to Section 702 only in accordance with FBI targeting procedures that had been adopted by the Attorney General, in consultation with the Director of National Intelligence. See FBI [REDACTED] Minimization Procedures § e.1.

11. [REDACTED] In addition, in relevant part, the FBI's [REDACTED] Minimization procedures address the manner in which the FBI was able to provide the [REDACTED]. [REDACTED] The FBI's [REDACTED] Minimization Procedures allowed the FBI to [REDACTED] unminimized form. See FBI [REDACTED] Minimization Procedures § k.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

IV. (U) Conclusion

[REDACTED]

4 [REDACTED]

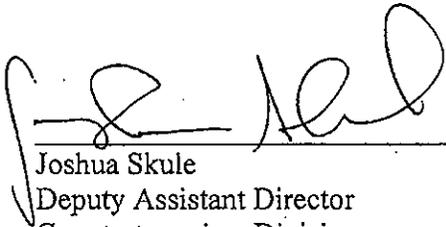
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(U) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 2014



Joshua Skule
Deputy Assistant Director
Counterterrorism Division
Federal Bureau of Investigation

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[REDACTED]

2. (U) The classification and control markings affixed to this declaration and each paragraph are made pursuant to the requirements of Executive Order 13526 and applicable regulations. The classification level of this declaration as a whole is the same as the highest classification level of information contained in any of its paragraphs. The overall classification of this document is TS//SI//NF. Each individual paragraph is portion-marked to indicate the classification of that paragraph: “(U)” for UNCLASSIFIED, “(S)” for SECRET, and “(TS)” for TOP SECRET. In addition to classified information, this declaration also references Special Intelligence (SI), which is a subcategory of Sensitive Compartmented Information (SCI), for which the Director of National Intelligence imposes additional safeguards and access requirements. Finally, and in addition to the separate levels of classification markings defined by Executive Order 13526, there are also dissemination controls appropriately associated with classified information. Dissemination control markings identify the expansion or limitation on the distribution of the information. Not Releasable to Foreign Nationals, indicated by the abbreviation NOFORN or NF, is an explicit foreign release marking used to indicate that the information may not be released in any form to foreign governments, foreign nationals, foreign organizations, or non-US citizens without permission of the originator of the information. Likewise, For Official Use Only, indicated by the abbreviation FOUO, indicates that the information has not been given a security classification pursuant to the criteria of Executive

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III. (U) Conclusion

[REDACTED]

(U) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5/9/2014

[REDACTED]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

| | | |
|--------------------------|---|--|
| UNITED STATES OF AMERICA |) | Crim. No. 1:12-cr-00033-JLK |
| |) | |
| -v- |) | |
| |) | |
| 1. JAMSHID MUHTOROV |) | FILED <i>EX PARTE</i> , <i>IN CAMERA</i> |
| 2. BAKHTIYOR JUMAEV |) | AND <u>UNDER SEAL</u> THROUGH |
| |) | THE CLASSIFIED INFORMATION |
| |) | SECURITY OFFICER |

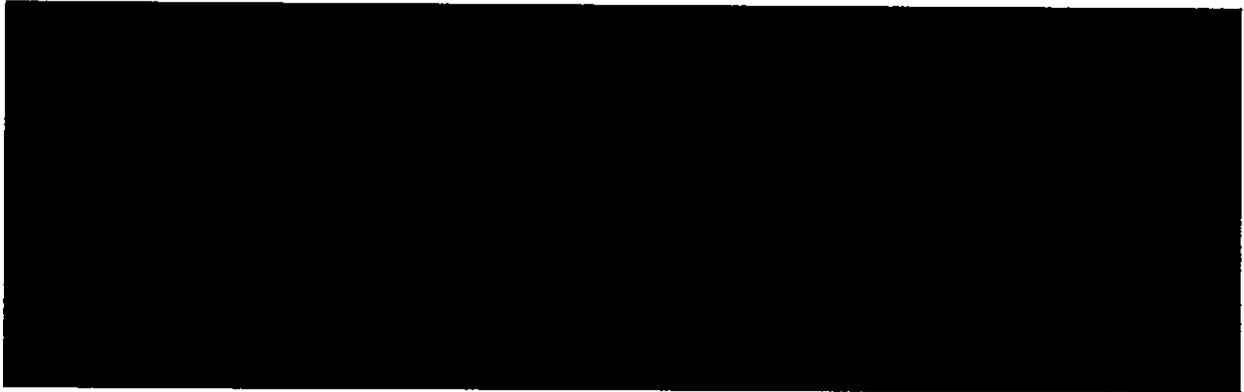
**(U) GOVERNMENT’S CLASSIFIED RESPONSE TO COURT’S REQUEST FOR
A DETAILED CHRONOLOGY**

[REDACTED] The United States of America, through John F. Walsh, United States Attorney, and Greg Holloway, Assistant United States Attorney, both for the District of Colorado, and Erin Creegan, Trial Attorney for the United States Department of Justice, National Security Division, Counterterrorism Section, respectfully submits this classified response to the court’s request for information about the government’s investigative steps from first learning of Muhtorov’s incidental interception via Section 702 collection to its initiation of independent FISA collection [REDACTED] This document is filed *ex parte*, *in camera*, and under seal with the Classified Information Security Officer.¹

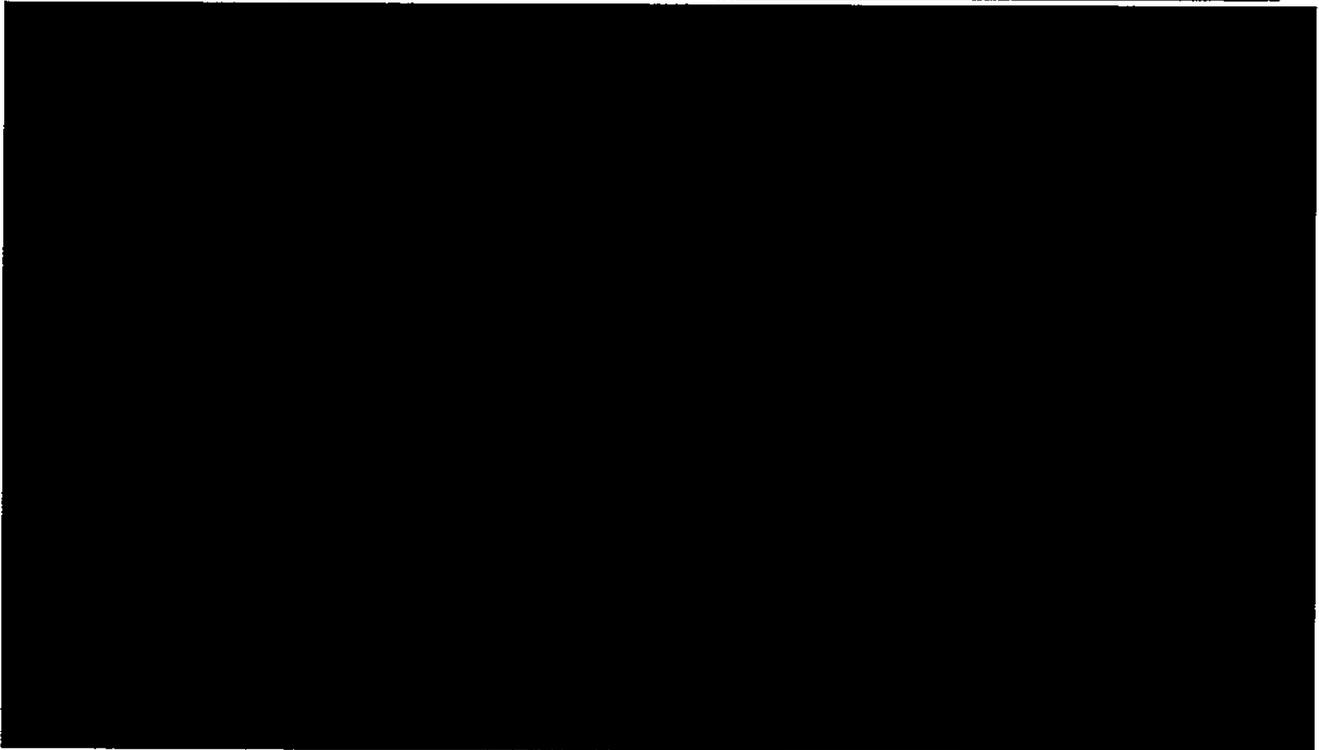
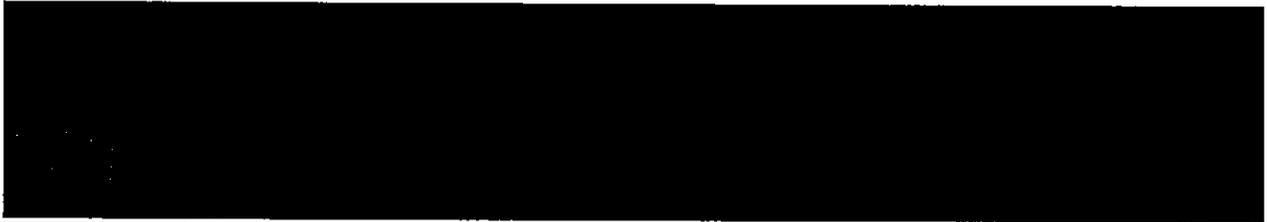
¹ ~~(S//SI//NF)~~ Because this brief contains classified information, each paragraph and heading is portion-marked, designating whether the information is classified, and the degree of its

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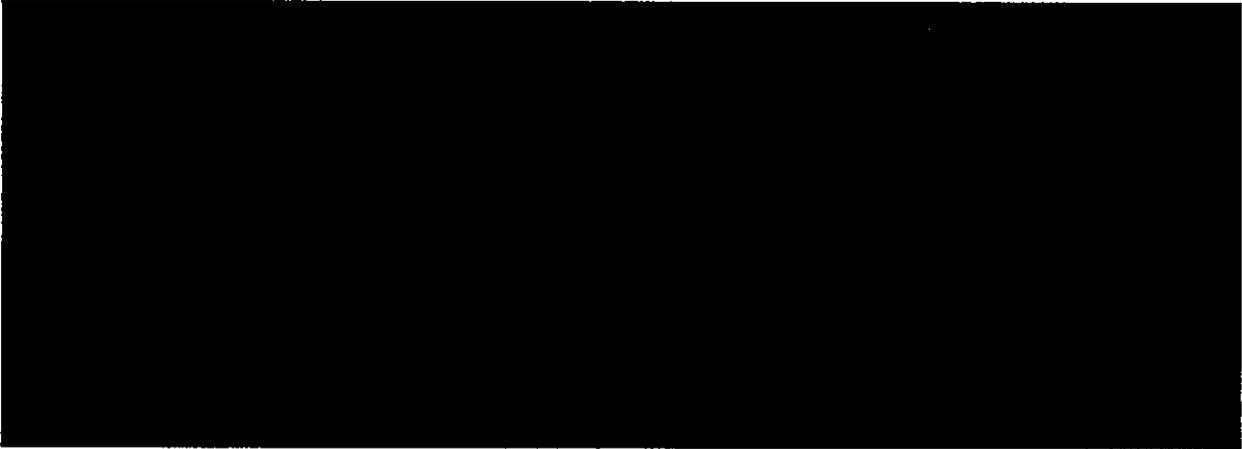
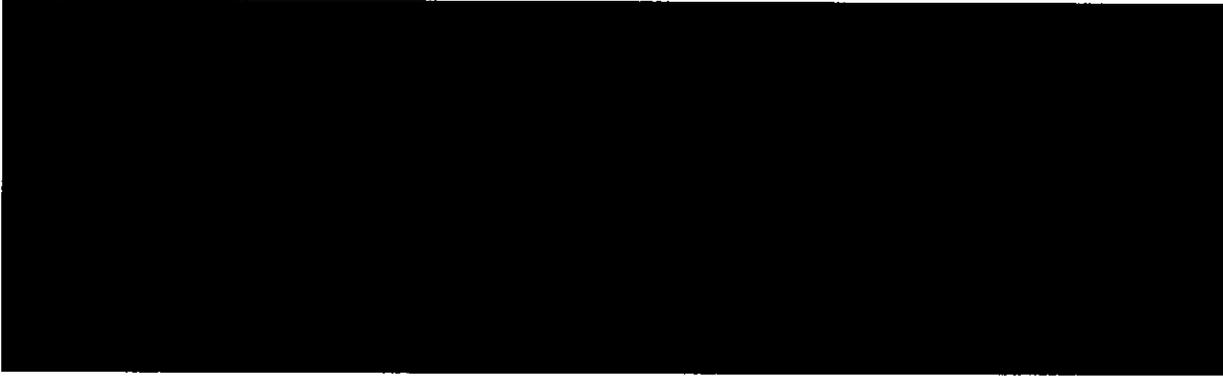


III. (U) Chronology



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The
Office of Intelligence (OI) is responsible for working with the FBI in initiating FISA
requests, and represents the United States in seeking FISA surveillance before
the FISC. [REDACTED]

[REDACTED]

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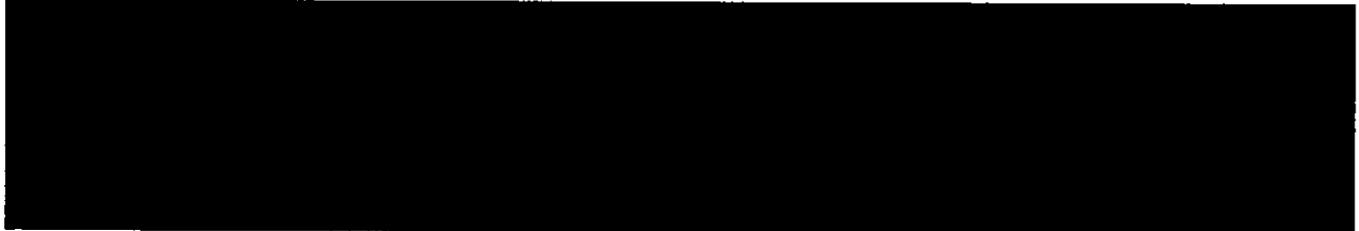
[REDACTED]

(U) Also in September of 2009, the Denver Field Office experienced a national security emergency with its first significant international terrorism case—the 2009 New York subway bombing plot. Two of the co-conspirators involved in that plot, Najibullah Zazi and Mohammed Wali Zazi, were located in the Denver area, and they were arrested and interrogated. The work on the case, including finding all co-conspirators, and supporting an eventual and successful prosecution in New York, involved around-the-clock work by nearly every agent working terrorism matters in the Denver Field Office, as well as the primary AUSA in the U.S. Attorney’s Office for national security matters, Gregory Holloway. The

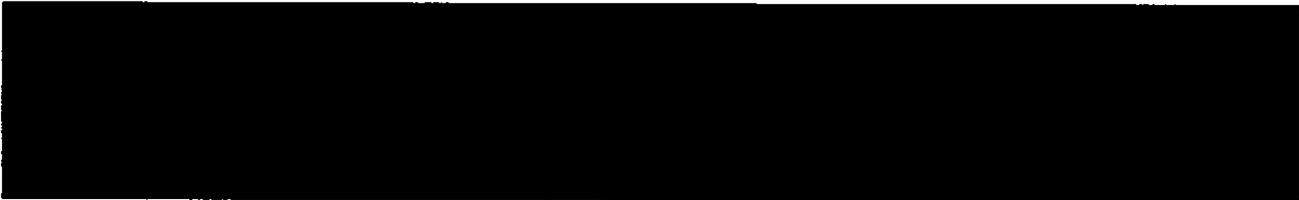
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subway-bombing-plot case continued to be a major drain on resources until August of 2010.

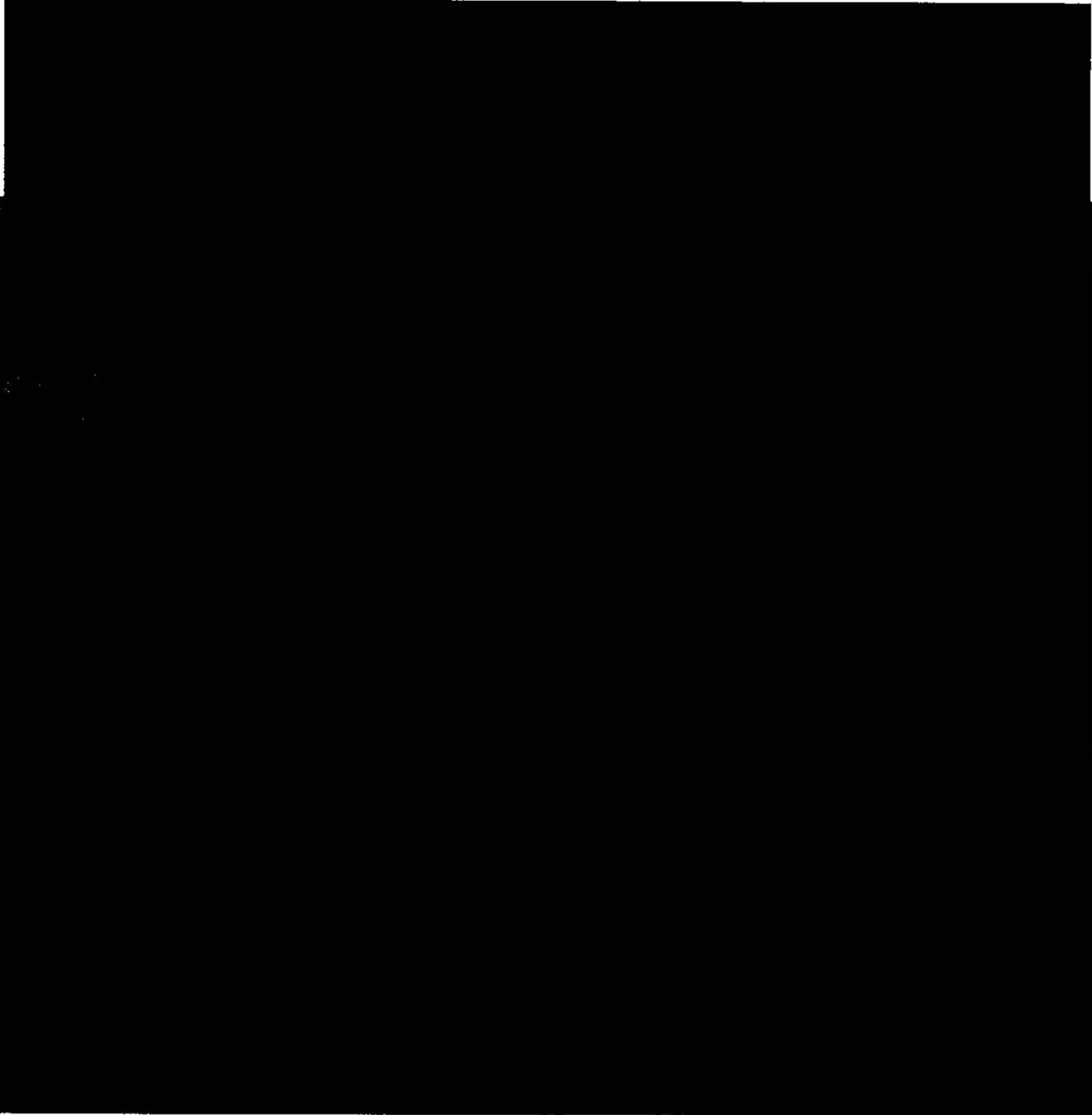


██████████ In the winter of 2009, while working on the subway-bombing-plot case, the AUSA consulted with Main Justice about whether Muhtorov's known activities were sufficient to bring charges against him and what additional methods of investigation should be pursued. At that time, *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), a case regarding when speech could be considered material support to a designated foreign terrorist organization, in violation of 18 U.S.C. § 2339B, was still pending before the Supreme Court of the United States. In the summer of 2010, the Supreme Court ultimately ruled that speech done at the direction and control of a foreign terrorist organization could be punished under § 2339B, whereas independent advocacy could not. In the winter of 2009, however, this remained an unresolved area of law. ██████████

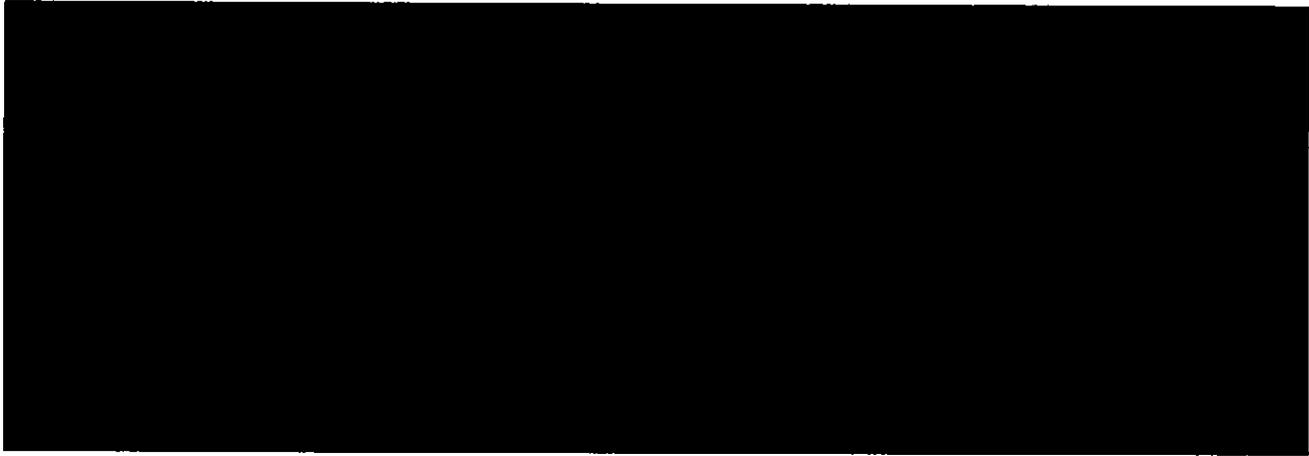


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VI. (U) Conclusion

(U) For the reasons laid out above, the government requests that the Court forthwith issue a denial of the Defendants' Motions to Suppress Evidence Obtained or Derived from Surveillance Under the FISA Amendments Act and Motions for Discovery. (Docs. 520 and 521).

Respectfully Submitted,

ERIN CREEGAN
Trial Attorney
Counterterrorism Section
National Security Division

GREG HOLLOWAY
Assistant United States Attorney
District of Colorado

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

| | | |
|--------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA |) | Crim. No. 1:12-cr-00033-JLK |
| |) | |
| -v- |) | |
| |) | |
| 1. JAMSHID MUHTOROV |) | FILED <i>EX PARTE, IN CAMERA</i> |
| 2. BAKHTIYOR JUMAEV |) | AND <u>UNDER SEAL</u> THROUGH |
| |) | THE CLASSIFIED INFORMATION |
| |) | SECURITY OFFICER |

(U) GOVERNMENT’S CLASSIFIED ADDENDUM TO ITS RESPONSE TO DEFENDANTS’ MOTION FOR NOTICE

(U) The United States of America, through John F. Walsh, United States Attorney, and Greg Holloway, Assistant United States Attorney, both for the District of Colorado, and Erin Creegan, Trial Attorney for the United States Department of Justice, National Security Division, Counterterrorism Section, respectfully submits this Addendum to its Response to Defendants’ Miscellaneous Motions for Notice (Docs. 652, 653, 658). This document is filed separately as an addendum to the motion because some of the information it contains is classified as Top Secret.¹

¹ ~~(S//SI//NF)~~ Because this brief contains classified information, each paragraph and heading is portion-marked, designating whether the information is classified, and the degree of its classification. In accordance with Executive Order 13526, this brief is classified “TOP SECRET,” which is the highest security classification level of any information contained herein. The letters “U,” “S,” and “TS” indicate that the information is, respectively, “UNCLASSIFIED” or is classified “SECRET” or “TOP SECRET.” The sensitivity of such information requires that access be limited to only those

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I. (U) Introduction

~~(S//NF)~~ The defendants have argued that, pursuant to 18 U.S.C. § 3504, the government is obligated to affirm or deny whether electronic surveillance occurred pursuant to Executive Order 12333 in their investigation. As laid out in the government's unclassified filing, neither defendant has presented a colorable basis for a claim that such surveillance occurred. Even if the defendants could demonstrate that the statute applied and that they have made a colorable claim, the government would only be obligated to confirm the fact of surveillance if a defendant were aggrieved in such surveillance and that surveillance or its product were going to be used in evidence against them. Because there is no surveillance conducted pursuant to Executive Order 12333 to which either defendant is aggrieved, of which the prosecution team is aware after investigating the matter with due diligence, the prosecution team is voluntarily providing a denial to the defendants and the Court regardless of whether § 3504 applies or whether either defendant has presented a colorable basis for a

personnel with a SECRET or TOP SECRET security clearance who are also specifically and separately authorized to receive "SCI" information. The designation "NF" (for "NO FOREIGN DISTRIBUTION") indicates that this document may not be disseminated to non-United States persons. The designation "SI" stands for "SPECIAL INTELLIGENCE" a type of "SCI" information which relates to technical and intelligence information derived from the monitoring of foreign communication signals. The "FISA" designation indicates the information collected pursuant to FISA is present.

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claim that such surveillance occurred. What follows is a summary of the prosecution team's knowledge and information regarding these facts.

II. (U) The Government's Review

(U) As stated in the government's unclassified memorandum, the government is providing additional information to the Court *ex parte* regarding the efforts the prosecution team undertook to meet its discovery obligations with respect to materials that may be in the possession of certain U.S. Intelligence agencies. The prosecution's review encompassed determining whether any surveillance conducted pursuant to Executive Order 12333, to which the defendants are aggrieved, would be used or led to evidence which would be used in the criminal case.



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(U) The Department of Justice has a formal process for requesting to review classified information from members of the Intelligence Community in connection with a criminal investigation where it is reasonable to conclude that a member of the Intelligence Community may have potentially discoverable information. That process is triggered by the issuance a Prudential Search Request from the Department of Justice, National Security Division, to any members of the Intelligence Community the Department of Justice has reason to believe may possess discoverable information in a case.

 In February 2013, the prosecutors sent Prudential Search Requests to the National Security Agency (which collects signals intelligence) and the Central Intelligence Agency (which collects human source intelligence).² 



² ~~(S//NF)~~ Prior to February 2013, the prosecution team had consulted with and submitted requests for information to both agencies. The Prudential Search Requests submitted in February 2013 were intended to determine whether there was any additional discoverable information of which the prosecution team should be aware.

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[REDACTED]

[REDACTED]³ Materials responsive to the search request were made available to the prosecution team for review. [REDACTED]

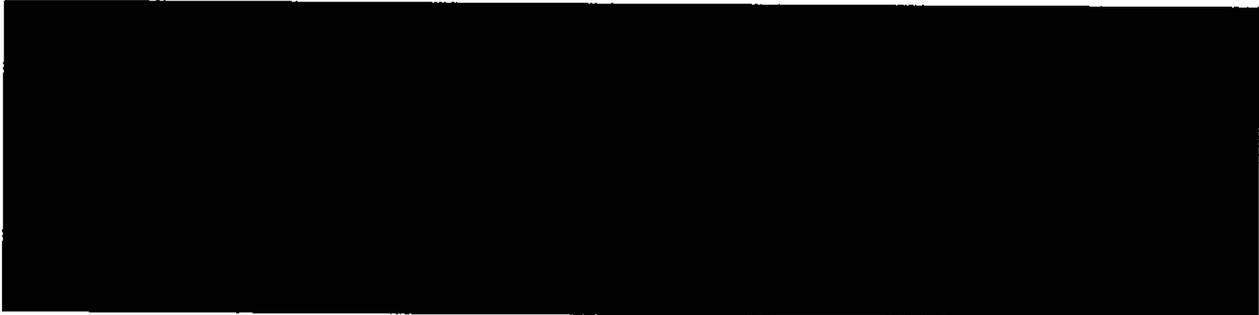
[REDACTED]

[REDACTED]

[REDACTED]

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No such communications were found.⁵

~~(TS//SI//NF)~~ While it is always possible that either defendant was, in fact, intercepted (for example, while using an identifier that is unknown to the government), such interceptions, which are completely unknown to the prosecutors and investigators assigned to the case, could not have led to the evidence that the government is presenting in this case.

~~(TS//SI//NF)~~ Therefore, even if one assumes that 18 U.S.C. § 3504 applies to electronic surveillance carried out under Executive Order 12333, and that either Muhtorov or Jumaev has made a sufficient showing for the government to provide notice of such surveillance, the fact remains that after reasonable searches, the prosecution team did not find that the communications of either defendant were intercepted pursuant to Executive Order 12333 or that, if they were, they led to any evidence which exists in the case.



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III. (U) Conclusion

(U) For these reasons, the government requests that the Court deny the defendants' motion for discovery.

Respectfully Submitted,

ERIN CREEGAN
Trial Attorney
Counterterrorism Section
National Security Division

GREG HOLLOWAY
Assistant United States Attorney
District of Colorado

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing

- (1) all required privacy redactions have been made;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) The digital submission has been scanned for viruses with the most recent version of Windows Defender, Version 1.325.389.0, dated 10/08/20, and according to the program is free of viruses.

s/ Joseph Palmer
Joseph Palmer
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit, using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Joseph Palmer
Joseph Palmer
U.S. Department of Justice