

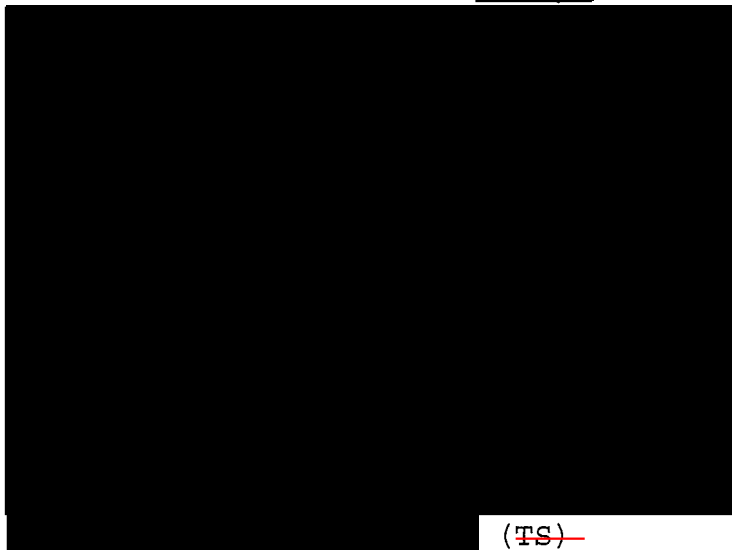
~~TOP SECRET//COMINT//NOFORN~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE FEDERAL
BUREAU OF INVESTIGATION FOR AN
ORDER REQUIRING THE PRODUCTION
OF TANGIBLE THINGS FROM [REDACTED]



Docket Number: BR:

09-06

(TS)-

PRIMARY ORDER

A verified application having been made by the Director of the Federal Bureau of Investigation (FBI) for an order pursuant to the Foreign Intelligence Surveillance Act of 1978 (the Act), Title 50, United States Code (U.S.C.), § 1861, as amended, requiring the production to the National Security Agency (NSA) of the tangible things described below, and full consideration

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Derived from: Pleadings in the above-captioned docket
Declassify on: 29 May 2034

having been given to the matters set forth therein, the Court finds as follows:

1. There are reasonable grounds to believe that the tangible things sought are relevant to authorized investigations (other than threat assessments) being conducted by the FBI under guidelines approved by the Attorney General under Executive Order 12333 to protect against international terrorism, which investigations are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. [50 U.S.C. § 1861(c)(1)]

2. The tangible things sought could be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things. [50 U.S.C. § 1861(c)(2)(D)]

3. The application includes an enumeration of the minimization procedures the government proposes to follow with regard to the tangible things sought. Such procedures are substantively the same as the minimization procedures approved and adopted as binding by the order of this Court in Docket Number BR 09-01. [50 U.S.C. § 1861(c)(1)]

Accordingly, the Court finds that the application of the United States to obtain the tangible things, as described below,

satisfies the requirements of the Act and, therefore,

IT IS HEREBY ORDERED, pursuant to the authority conferred on this Court by the Act, that the application is GRANTED, and it is

FURTHER ORDERED, as follows:

(1) (A) The Custodians of Records [REDACTED] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata"¹ created by [REDACTED]
[REDACTED]

(B) The Custodian of Records of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily

¹ For purposes of this Order "telephony metadata" includes comprehensive communications routing information (e.g., originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer.

basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by [REDACTED] for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls. [REDACTED]

[REDACTED]

[REDACTED]

(2) With respect to any information the FBI receives as a result of this Order (information that is passed or "tipped" to it by NSA), the FBI shall follow as minimization procedures the procedures set forth in The Attorney General's Guidelines for Domestic FBI Operations (September 29, 2008).

(3) With respect to the information that NSA receives as a result of this Order, NSA shall strictly adhere to the following minimization procedures:

A. The government is hereby prohibited from accessing business record metadata acquired pursuant to this Court's orders in the above-captioned docket and its predecessors ("BR metadata") for any purpose except as described herein.

B. The BR metadata may be accessed for the purposes of ensuring data integrity and developing and testing any technological measures designed to enable the NSA to comply with

the Court's orders. Access to the BR metadata for such purposes shall be limited to the NSA Collection Managers, Data Integrity Analysts, and System Administrators described in paragraphs 17-19 of the Declaration of [REDACTED] Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate, the National Security Agency, filed as Exhibit A to the Application in the above-captioned docket (" [REDACTED] Declaration"). Additional individuals directly involved in developing and testing any technological measures designed to enable the NSA to comply with the Court's orders may be granted access, provided such access is approved by NSA's Office of General Counsel (OGC) on a case-by-case basis.

C. The government may request through a motion, permission from the Court to use specific telephone identifiers² that

satisfy the reasonable articulable suspicion standard³ to query

³ The reasonable articulable suspicion standard is met when, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable, articulable suspicion that the telephone identifier is associated with [REDACTED]

[REDACTED] provided, however, that any telephone identifier believed to be used by a U.S. person shall not be regarded as associated with [REDACTED]

[REDACTED] solely on the basis of activities that are protected by the First Amendment to the Constitution.

For purposes of this Order, [REDACTED]

[REDACTED]

the BR metadata for purposes of obtaining foreign intelligence information through contact chaining [REDACTED] [REDACTED] as described in the [REDACTED] Declaration at 6-7, on a case-by-case basis. In addition, if the government determines that immediate querying of the BR metadata through contact chaining [REDACTED] is necessary to protect against an imminent threat to human life, the government may query the BR metadata for such purpose. In any case falling into this latter category, the government shall notify the Court of the access, in writing, no later than 5:00 p.m., Eastern Time on the next business day after such access. Any submission to the Court under this paragraph shall, at a minimum, specify the telephone identifier for which access is sought or was granted, provide

[REDACTED]

the factual basis for the NSA's belief that the reasonable articulable suspicion standard has been met with regard to that identifier⁴ and, if such access has already taken place, a statement of the immediate threat necessitating such access. Only the Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate; the Chief or Deputy Chief, Homeland Security Analysis Center; or one of the twenty specially-authorized Homeland Mission Coordinators in the Analysis and Production Directorate of the Signals Intelligence Directorate shall be authorized to access the BR metadata for purposes of implementing this sub-paragraph.

D. For the duration of the authorization granted by this Order, the NSA may use certain telephone identifiers previously approved by the Court in docket number BR 09-01, specifically, only those [REDACTED] telephone identifiers described in Tab 1 to the [REDACTED] Declaration, to conduct queries of the BR metadata for purposes of obtaining foreign intelligence information through

[REDACTED]

⁴ For telephone identifiers that are currently subject to Court-authorized electronic surveillance, pursuant to 50 U.S.C. § 1805, based on this Court's finding of probable cause to believe that they are used by [REDACTED]

[REDACTED] including those used by U.S. persons, the government's submission need only provide the target's name, docket number, and date of expiration of this Court's most recent authorization of electronic surveillance.

contact chaining [REDACTED] in accordance with this Order. If NSA has knowledge of the discontinued use of any such identifier, its analysis and minimization of information retrieved from the queries based on any such identifier should be informed by the knowledge of discontinued use of the identifier.

E. The Director of the NSA shall continue to maintain mandatory procedures to strictly control access to and use of the BR metadata, in accordance with this Court's orders.

F. The NSA shall obtain the BR metadata from [REDACTED] [REDACTED] via dedicated secure lines, and shall store and process the BR metadata on a secure internal network that NSA exclusively will operate.

G. Any processing by technical personnel of the BR metadata acquired pursuant to this order shall be conducted through the NSA's secure internal network, which shall be accessible only to cleared technical personnel, using accounts authorized by a user authentication service, based on user login and password.

H. Access to the BR metadata shall be accomplished through a software interface that will limit access to this data to authorized personnel. NSA's Oversight and Compliance Office shall monitor the designation of individuals with access to the BR metadata. Access to the metadata shall be controlled by user

name and password. When the metadata is accessed, the user's login, Internet Protocol (IP) address, date and time, and retrieval request shall be automatically logged for auditing capability. NSA's OGC shall monitor the functioning of this automatic logging capability. Persons authorized for access to the BR metadata shall be briefed by NSA's OGC concerning the authorization granted by this Order and the limited circumstances in which queries to the metadata are permitted, as well as other procedures and restrictions regarding the retrieval, storage, and dissemination of the metadata.

I. Any dissemination of U.S. person information shall follow the standard NSA minimization procedures found in USSID 18. Before information identifying a U.S. person may be disseminated outside of NSA, a judgment must be made that the identity of the U.S. person is necessary to understand the foreign intelligence information or to assess its importance. Prior to the dissemination of any U.S. person identifying information, the Chief of Information Sharing Services in the Signals Intelligence Directorate must determine that the information identifying the U.S. person is in fact related to counterterrorism information and that it is necessary to understand the counterterrorism information or assess its

importance.⁵ A record shall be made of every such determination.

J. At least once before the expiration of the authorities granted herein, NSA's OGC shall conduct a random spot check, consisting of an examination of a sample of call detail records obtained, to ensure that NSA is receiving only data as authorized by the Court and not receiving the substantive content of communications.

K. The BR metadata collected under this Court's Orders may be kept online (that is, accessible for queries) for five years from the date of acquisition, at which time it shall be destroyed.

L. The Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate; Chief and Deputy Chief, Homeland Security Analysis Center; and the Homeland Mission Coordinators shall maintain appropriate management controls (e.g., records of all tasking decisions, audit and review procedures) for access to the metadata and shall use the USSID 18 to minimize the information reported concerning U.S. persons.

M. The government shall implement the additional oversight mechanisms to ensure compliance with this Order:

⁵ The Court understands that the Senior Operations Officer at NSA's National Security Operation Center is the approving authority for after-hours requests.

(i) NSA's OGC shall consult with the Department of Justice's National Security Division (NSD) on all significant legal opinions that relate to the interpretation, scope, and/or implementation of the authorizations granted by the Court in this matter. When operationally practicable, such consultation shall occur in advance; otherwise, NSD shall be notified as soon as practicable.

(ii) NSA's OGC shall promptly provide NSD with copies of the mandatory procedures (and all replacements, supplements or revisions thereto in effect now or adopted in the future) the Director of NSA is required to maintain to strictly control access to and use of the data acquired pursuant to orders issued by the Court in this matter.

(iii) NSA's OGC shall promptly provide NSD with copies of all formal briefing and/or training materials (including all revisions thereto) currently in use or prepared and used in the future to brief/train NSA personnel concerning the authorizations granted by this Order.

(iv) At least once before the expiration of the authorities granted herein, a meeting for the purpose of assessing compliance with this Court's orders in this matter shall be held with representatives from NSA's OGC,

NSD, and appropriate individuals from NSA's SID. The results of this meeting shall be reduced to writing and submitted to the Court as part of any application to renew or reinstate the authorities granted herein.

(v) At least once before the expiration of the authorities granted herein, NSD shall meet with NSA's Office of Inspector General (OIG) to discuss their respective oversight responsibilities and assess NSA's compliance with the Court's orders in this matter.

(vi) Prior to implementation, all proposed automated query processes shall be reviewed and approved by NSA's OGC, NSD, and the Court.

N. Any application to renew or reinstate the authority granted herein shall include a report describing: (i) the queries made since the end of the reporting period of the last report filed with the Court; and (ii) any proposed changes in the way in which the call detail records would be received from the carriers.

O. Upon completion of the government's end-to-end system engineering and process reviews, described in Memorandum of the United States In Response to the Court's Order Dated January 28, 2009, Tab 1, Declaration of Lieutenant General Keith B. Alexander, United States Army, Director of the NSA, filed

February 17, 2009, at 21, the government shall file a report with the Court, that shall, at a minimum, include:

(i) an affidavit by the Director of the FBI, and affidavits by any other official responsible for national security that the government deems appropriate, describing the value of the BR metadata to the national security of the United States and certifying that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, and that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment;

(ii) a description of the results of the NSA's end-to-end system engineering and process reviews, including any additional instances of non-compliance identified therefrom;

(iii) a full discussion of the steps taken to remedy any additional non-compliance as well as the incidents described in the Court's Order of March 2, 2009 in docket number BR 08-13, and an affidavit attesting that any technological remedies have been tested and demonstrated to

be successful; and

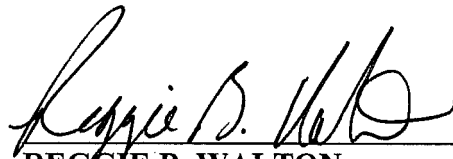
(iv) additional minimization and oversight procedures the government proposes to employ should the Court decide to authorize the government's resumption of regular access to the BR metadata.

This authorization regarding [redacted] and unknown persons in the United States and abroad affiliated with [redacted]

[redacted] and unknown persons in the United States and abroad affiliated with [redacted]

[redacted] expires on 10th day of JULY, 2009, at 5:00 p.m., Eastern Time.

Signed _____ 05-29-2009 11:43 Eastern Time
Date Time


REGGIE B. WALTON
Judge, United States Foreign
Intelligence Surveillance Court

[redacted] Deputy Clerk
FISC. certify that this document
is a true and correct copy of
the original [redacted]