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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

2011 FEB -5 AM 11:50

LEE ANN FLYNN HALL
CLERK OF COURT

(TS//NF) IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION FOR
AN ORDER REQUIRING THE PRODUCTION
OF TANGIBLE THINGS

Docket Number: BR 14-01

(U) MOTION FOR AMENDMENT TO PRIMARY ORDER

(TS//SI//NF) The United States of America, hereby moves this Court, pursuant to the Foreign Intelligence Surveillance Act of 1978 (the "Act"), Title 50, United States Code (U.S.C.), § 1861, as amended, for an amendment to the Primary Order issued in the above-captioned docket number. Specifically, the Government requests that the Primary Order be amended to require the Government to obtain the Court's permission, by motion, to use specific selection terms (or "seeds") to query the BR metadata for purposes of obtaining foreign intelligence information, except in cases of emergency. In addition, going forward, authorized queries of the BR metadata to obtain foreign intelligence information will return only that metadata within two "hops" of the seed.¹

¹ (U//FOUO) The first "hop" from a seed returns results including all identifiers (and their associated metadata) with a contact and/or connection with the seed. The second "hop" returns

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Classified by: John P. Carlin, Acting Assistant
Attorney General, NSD, DOJ
Reason: 1.4(c)
Declassify on: [REDACTED]

1. ~~(TS//SI//NF)~~ Upon consideration of the Application by the United States, on January 3, 2014, the Honorable Thomas F. Hogan of this Court issued orders in the above-captioned docket number requiring the production to the National Security Agency (NSA) of certain call detail records or "telephony metadata" created by certain specified telecommunications providers. That authority expires on March 28, 2014, at 5:00 p.m. Eastern Time. The application, including all exhibits and the resulting orders, is incorporated herein by reference.

2. ~~(TS//SI//NF)~~ The Primary Order in the above-captioned docket number requires NSA to strictly adhere to the enumerated minimization procedures. Among the minimization procedures is subparagraph (3)C, which, in summary, authorizes NSA to access the BR metadata for purposes of obtaining foreign intelligence information only through queries of the BR metadata to obtain contact chaining information (as described) using selection terms approved as "seeds" pursuant to the RAS approval process described in subparagraph (3)C.

3. ~~(TS//SI//NF)~~ The Government moves this Court for an amendment to the Primary Order in docket number BR 14-01 that will require the Government to first obtain the Court's approval, by motion, to use specific selection terms to the query the

results that include all identifiers (and their associated metadata) with a contact and/or connection with an identifier revealed by the first "hop."

BR metadata for purposes of obtaining foreign intelligence information, except in cases determined to be an emergency. The Government further moves this Court for an amendment to the Primary Order restricting queries of the BR metadata to obtain foreign intelligence information to return only that metadata within two "hops" of an approved seed. The Government is seeking these amendments to the Primary Order based on direction from the President of the United States of America concerning the manner in which the Government will implement this program going forward.


4. ~~(TS//SI//NF)~~ Specifically, the Government requests that the Court strike subparagraph (3)C from the Primary Order in docket number BR 14-01 and replace it with the following new subparagraph (3)C:

C. The government may request, by motion and on a case-by-case basis, permission from the Court for NSA^(FN1) to use specific selection terms that satisfy the reasonable articulable suspicion (RAS) standard^(FN2) as "seeds" to query the BR metadata to obtain contact chaining information, within two hops of an approved "seed", for purposes of obtaining foreign intelligence information. In addition, the Director or Acting Director of NSA may authorize the emergency querying of the BR metadata with a selection term for purposes of obtaining foreign intelligence information, within two hops of a "seed", if: (1) the Director or Acting Director of NSA reasonably determines that an emergency situation exists with respect to the conduct of such querying before an order authorizing such use of a selection term can with due diligence be obtained; and (2) the Director or Acting Director of NSA reasonably determines that the RAS standard has been met with respect to the selection term. In any case in which this emergency authority is exercised, the government shall make a motion in accordance with this

amendment to Primary Order to the Court as soon as practicable, but not later than 7 days after the Director or Acting Director of NSA authorizes such query. ^(FN3)

(i) Any submission to the Court under this paragraph shall, at a minimum, specify the selection term for which query authorization is sought or was granted, provide the factual basis for the NSA's belief that the reasonable articulable suspicion standard has been met with regard to that selection term and, if such query has already taken place, a statement of the emergency necessitating such query. ^(FN4)

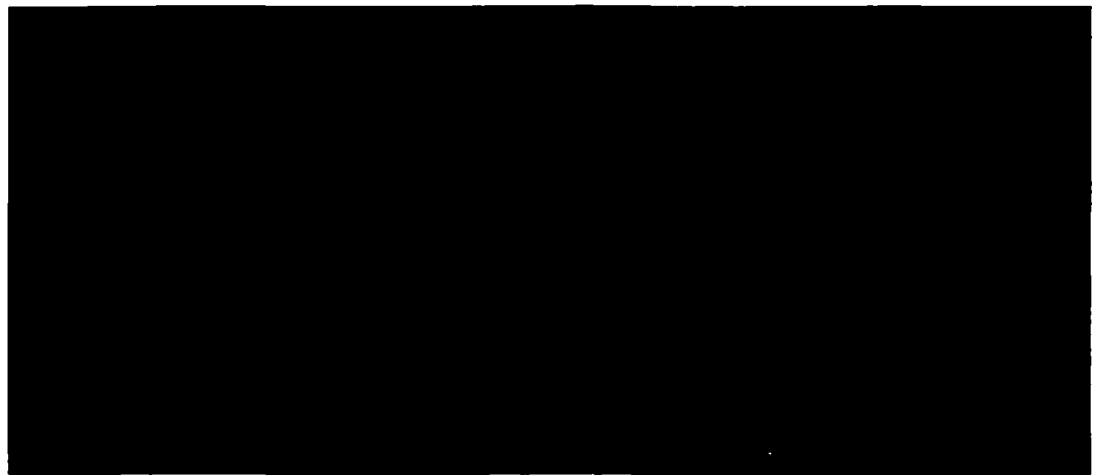
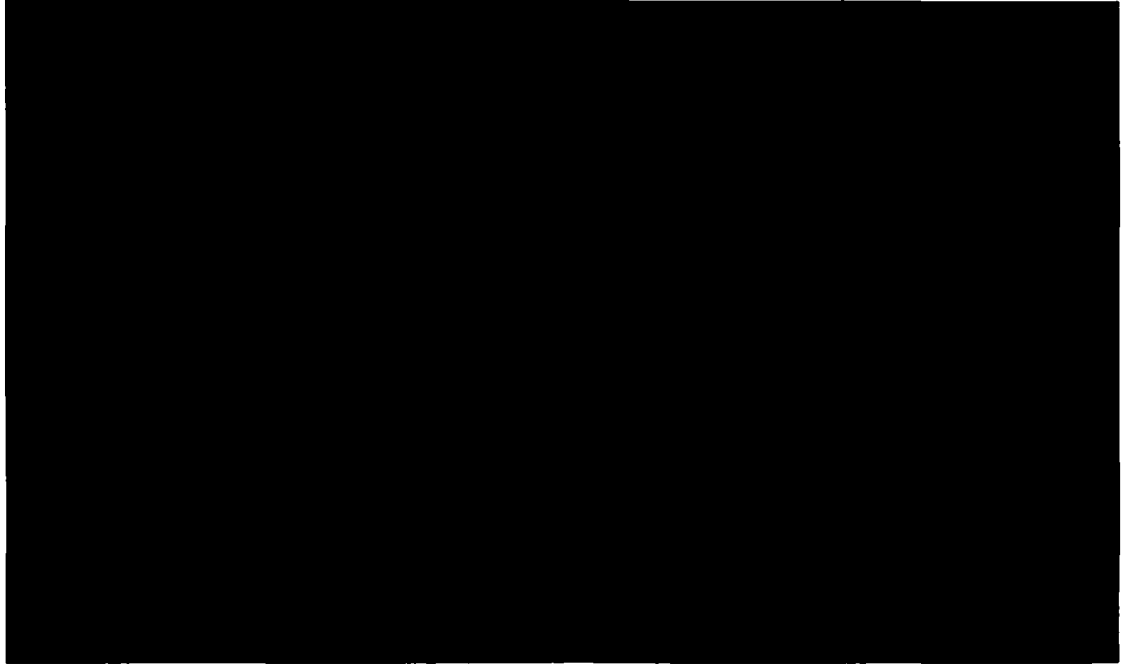
(ii) NSA shall ensure, through adequate and appropriate technical and management controls, that queries of the BR metadata for intelligence analysis purposes will be initiated using only a selection term that has been RAS-approved. Whenever the BR metadata is accessed for foreign intelligence analysis purposes or using foreign intelligence analysis query tools, an auditable record of the activity shall be generated. ^(FN5)

(iii) The Court's finding that a selection term is associated with  shall be effective for: one hundred eighty days for any selection term reasonably believed to be used by a U.S. person; and one year for all other selection terms. ^{(FN6)(FN7)}

(iv) Queries of the BR metadata using RAS-approved selection terms may occur either by manual analyst query or through the automated query process described below. In either case, queries of the BR metadata to obtain foreign intelligence information shall return only that metadata within two "hops" of an approved seed. ^(FN8) This automated query process queries the collected BR metadata (in a "collection store") with RAS-approved selection terms and returns the hop-limited results from those queries to a "corporate store." The corporate store may then be searched by appropriately and adequately trained personnel for valid foreign intelligence purposes, without the requirement that those searches

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use only RAS-approved selection terms. The specifics of the automated query process, as described in the [REDACTED] Declaration and modified by this Order, are as follows:



(FNI) For purposes of this Order, "National Security Agency" and "NSA personnel" are defined as any employees of the National Security Agency/Central Security Service ("NSA/CSS" or "NSA") and any other personnel engaged in Signals Intelligence (SIGINT)

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operations authorized pursuant to FISA if such operations are executed under the direction, authority, or control of the Director, NSA/Chief, CSS (DIRNSA). NSA personnel shall not disseminate BR metadata outside the NSA unless the dissemination is permitted by, and in accordance with, the requirements of this Order that are applicable to the NSA.

^(FN2) 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 (RAS) that the selection term to be queried is associated with [REDACTED]

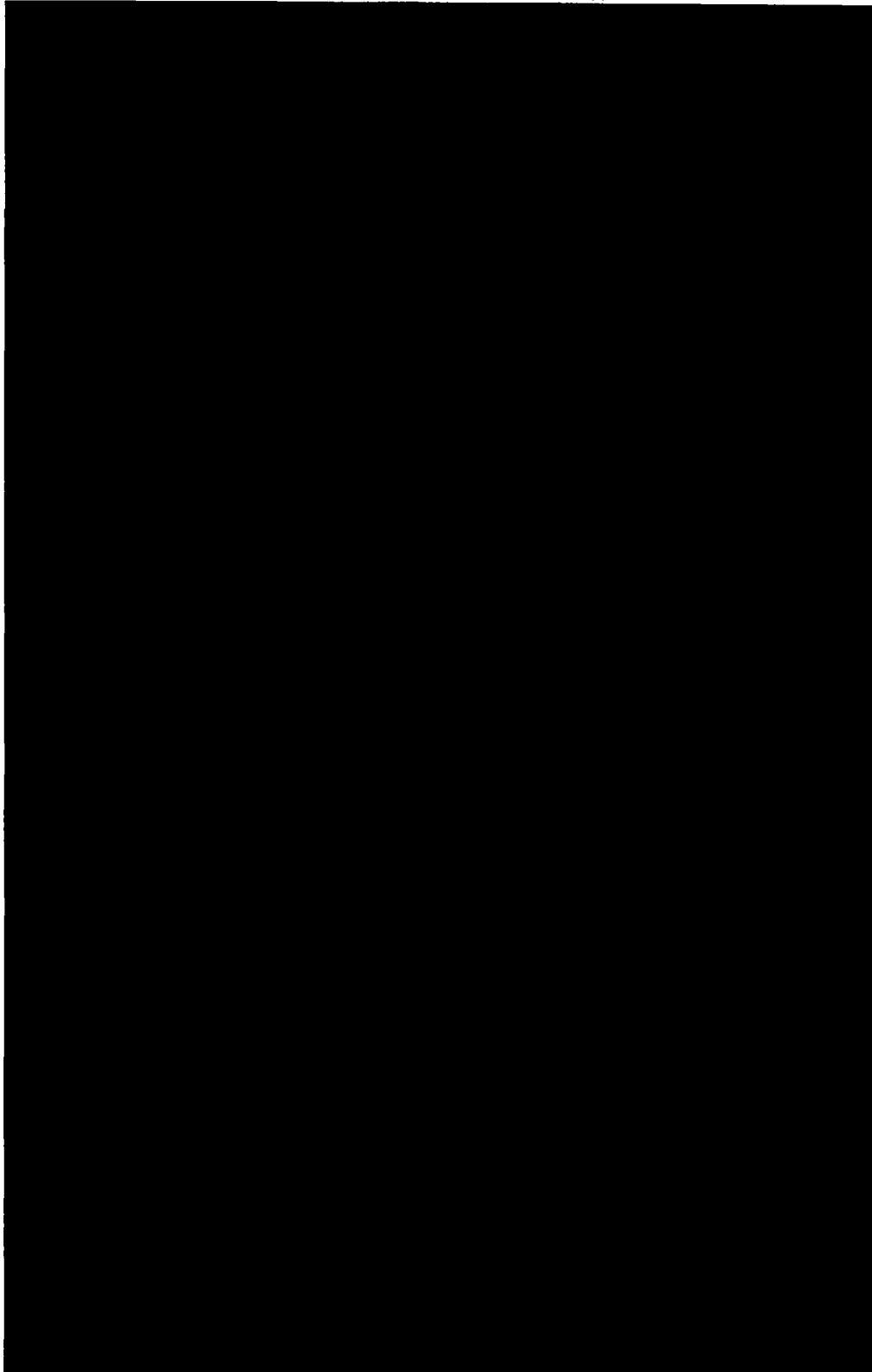
[REDACTED] provided, however, that any selection term reasonably believed to be used by a United States (U.S.) person shall not be regarded as associated with [REDACTED]

[REDACTED] solely on the basis of activities that are protected by the First Amendment to the Constitution. In the event the emergency provisions of any amendment to the Court's Primary Order are invoked by the Director or Acting Director, NSA's Office of General Counsel (OGC), in consultation with the Director or Acting Director will first confirm that any selection term reasonably believed to be used by a United States (U.S.) person is not regarded as associated with [REDACTED]

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




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^[FN3] In the event the Court denies such motion, the government shall take appropriate remedial steps, including any steps the Court may direct.

^[FN4] For any selection term that is subject to ongoing Court-authorized electronic surveillance, pursuant to 50 U.S.C. § 1805, based on this Court's finding of probable cause to believe that the selection term is being used or is about to be used by 



[REDACTED] including those used by U.S. persons, the government may use such selection terms as "seeds" during any period of ongoing Court-authorized electronic surveillance without first seeking authorization from this Court as described herein. Except in the case of an emergency, NSA will first notify the Department of Justice, National Security Division of its proposed use as a seed any selection term subject to ongoing Court-authorized electronic surveillance.

[FN5] This auditable record requirement shall not apply to accesses of the results of RAS-approved queries.

[FN6] The Court understands that from time to time the information available to NSA will indicate that a selection term is or was associated with a Foreign Power only for a specific and limited time frame. In such cases, the government's submission shall specify the time frame for which the selection term is or was associated with [REDACTED]

[REDACTED] In the event the Court finds that the RAS standard is met, the automated query process described herein shall limit the first hop query results to the specified time frame, and analysts conducting manual queries using that selection term shall continue to properly minimize information that may be returned within query results that fall outside of that timeframe.

[FN7] The Court understands that NSA receives certain call detail records pursuant to other authority, in addition to the call detail records produced in response to this Court's Orders. NSA shall store, handle, and disseminate call detail records produced in response to this Court's Orders pursuant to this Order, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[FN8] The first "hop" from a seed returns results including all identifiers (and their associated metadata) with a contact and/or connection with the seed. The second "hop" returns results that include all identifiers (and their associated metadata) with a contact and/or connection with an identifier revealed by the first "hop."

[FN9]



[FN10]



[FN11]



[FN12] The Court understands that to date NSA has not implemented, and for the duration of this authorization will not as a technical matter be in a position to implement, the automated query process authorized by prior orders of this Court for analytical purposes. Accordingly, this amendment to the Primary Order authorizes the use of this automated query process for development and testing purposes only. No query results from such testing shall be made available for analytic purposes. Use of this automated query process for analytical purposes requires further order of this Court.

5. (TS//SI//NF) The Government respectfully submits that the procedures set forth in the Court's Primary Order, as amended by this motion, would meet the statutory definition of minimization procedures. Section 1861(c)(1) requires that upon approval of an application the Court direct that minimization procedures adopted pursuant to subsection (g) be followed. Subsection (g) requires the adoption of minimization procedures which are reasonably designed in light of the purpose and technique of a tangible things order to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons, consistent with the need of the Government to obtain, produce and disseminate foreign intelligence information. To further enhance privacy and civil liberty protections concerning the information produced to and retained by the Government pursuant to the Court's orders issued in this matter, the Government seeks an amendment to the Court's Primary Order requiring prior judicial review and approval, except in an emergency, to use specific selection terms to query the BR metadata for purposes of obtaining foreign intelligence information, and to restrict queries of the BR metadata to return only that metadata within two "hops" of an approved seed. As the Government has acknowledged, the applications seeking the bulk production of call detail records are not routine due to the nature and scope of the production. In light of the bulk nature of the production for which authority has been

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granted, the Government is proposing amendments which, if approved, will require prior judicial review and approval of the Government's RAS determinations and a further limitation on hops. The Government respectfully submits that these proposed additional limitations on the minimization procedures previously approved by this Court are consistent with Section 1861(g)'s definition of minimization procedures because they seek to further ensure (1) that the Government's access to and analysis of the BR metadata is for appropriate counterterrorism purposes consistent with the Court's authorization; (2) that query results containing nonpublicly available information concerning unconsenting United States persons are limited, consistent with the needs of the counterterrorism purpose of the production; and (3) that NSA's disseminations of such United States person information be as limited as possible consistent with the needs of the Government to disseminate counterterrorism information. The proposed minimization procedures are similar to those approved and adopted as binding by order of this Court in docket numbers BR 09-01, BR 09-06, and BR 09-09.

~~(TS//SI//NF)~~ For the reasons set out above, the Government respectfully submits that consistent with section 1861(g) the proposed amendments are reasonably designed in light of the nature and purpose of the bulk telephony metadata production to further protect United States person information, and to further ensure that the information

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produced is used and disseminated in furtherance of the counterterrorism purpose of the production.

6. ~~(TS//SI//NF)~~ By this motion, the Government does not seek to modify any other provisions of the Primary Order in docket number BR 14-01.² The Government will continue to comply with all of the other restrictions and procedures described in the Court's Primary Order.

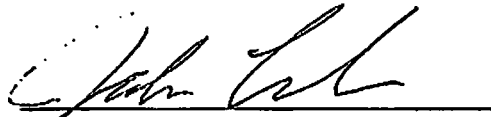
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² ~~(TS//SI//NF)~~ In particular, this motion does not seek to modify the provisions of subparagraph (3)B of the Primary Order. Consistent with that subparagraph, appropriately trained and authorized technical personnel will access the BR metadata (including via queries using non-RAS-approved selection terms) to perform those processes needed to make the BR metadata usable for intelligence analysis

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~~(TS//SI//NF)~~ WHEREFORE, the United States of America, through the undersigned attorney, moves for an amendment to the Primary Order in docket number BR 14-01 striking paragraph (3)C of the Primary Order and replacing it with a new subparagraph (3)C set forth above.

Respectfully submitted,



John P. Carlin
Acting Assistant Attorney General
National Security Division
U.S. Department of Justice

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(U) APPROVAL

(S) I find that the foregoing Motion for Amendment to Primary Order satisfies the criteria and requirements set forth in the Foreign Intelligence Surveillance Act of 1978, as amended, and hereby approve its filing with the United States Foreign Intelligence Surveillance Court.

Date

2/5/14
Date

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



James M. Cole
Deputy Attorney General of the United States