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KAREN E. SUTTON, CLERK


MAY 14 2004

U.S. Foreign Intelligence  
Surveillance Court

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UNITED STATES  
FOREIGN INTELLIGENCE SURVEILLANCE COURT  
WASHINGTON, D. C.

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IN RE ELECTRONIC SURVEILLANCE AND : Docket Number:   
PHYSICAL SEARCH OF INTERNATIONAL :  
TERRORIST GROUPS, THEIR AGENTS, :  
AND RELATED TARGETS. ~~(S)~~ :

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MOTION FOR CONTINUATION OF AMENDED ORDER

Introduction (U)

The United States of America, by counsel, hereby moves this Court, pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. §§ 1801-1811 and 1821-1829 (FISA or the Act), to order the permanent continuation of its order of July 22, 2002, in the above-captioned matter. The United States seeks continuance of the order because it has been highly successful. ~~(S)~~

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Classified by: James A. Baker, Counsel for Intelligence Policy, OIPR, DOJ  
Reason: 1.4(c) - (d)  
Declassify on: X1

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Because the order permits the rapid sharing of information within the United States Intelligence Community, the United States has obtained vital actionable intelligence regarding the activities, capabilities, plans and intentions of [REDACTED]

[REDACTED] The U.S. Intelligence Community process for sharing information - and taking action based upon such information - that the July 22, 2002 Order has fostered is now a vital part of the Nation's war on terrorism. The order has permitted the U.S. Intelligence Community to produce and disseminate to policy makers (including the President of the United States) a substantial volume of intelligence reports, and has enabled the United States and its allies to locate and apprehend numerous terrorists overseas and disrupt terrorist operations. As a result, we submit that the order has enhanced the ability of the United States Government to protect national security. Moreover, because of the manner in which the U.S. Intelligence Community has implemented the order, we submit that the intrusion on the privacy interests of Americans to date has been limited. ~~(TS)~~

On July 22, 2002, the Court authorized the Federal Bureau of Investigation (FBI) to provide to the Central Intelligence Agency (CIA) and the National Security Agency (NSA) "raw data" (i.e.

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unminimized information) obtained from certain searches and surveillances of terrorist targets under the FISA. The Court's Order, described below, modified the standard minimization procedures used in international terrorism cases. The Court further ordered that the "matter shall be fully considered again by the Court en banc at its annual conference in May of 2004." See July 22, 2002 Order at 5.<sup>1</sup> In this regard, on April 21, 2004, the Court directed that the Government:

[S]hall file a motion requesting continuation of that order. Such motion should include a statement that the factual circumstances relied upon by the Government in seeking approval of such procedures continue (or, to the extent they have changed, why the procedures should continue to be followed under current circumstances). ~~(S)~~

The United States, in support of this motion, states:

1. Prior to the July 22, 2002 Order, the CIA and the NSA provided linguistic and technical assistance to the FBI in analyzing unminimized foreign intelligence information, but could only use and disseminate limited, minimized data specifically disclosed to them by the FBI. On May 10, 2002, the Government filed a motion to provide raw data directly from the FBI to the

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<sup>1</sup> The Court further ordered the Department of Justice to report every six months on the implementation of the Order. This motion incorporates information taken from the most recent report which covers the time period from September 1, 2003 to December 31, 2003. That report will be filed with the Court forthwith. ~~(S)~~

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CIA and the NSA, which those agencies would then minimize. The Government made this motion because of the need to

- (i) disseminate pertinent foreign intelligence information rapidly to the CIA and the NSA, (ii) enable these agencies to apply their analytical skills to the data directly, and
- (iii) provide maximum flexibility in applying Intelligence Community resources to international terrorist targets. In its Order, the Court granted the Government's motion with modifications. ~~(S)~~

2. The July 22, 2002 Order provided the following. The FBI may provide the CIA and the NSA raw data obtained from FBI electronic surveillances and physical searches targeting international terrorist groups and their agents, or from surveillances or searches of other targets where there is a reasonable expectation that the surveillance or search will reveal information related to international terrorism. The raw data provided may include communications of or information about U.S. persons. The CIA and the NSA may review, translate, analyze, minimize, use, retain and disseminate such information pursuant to certain minimization procedures. The NSA is to employ the standard FISA minimization procedures that it normally uses for conducting its Court-authorized surveillances, with certain modifications. Likewise, the CIA is to use procedures

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similar to those it normally uses for the retention and dissemination of information from its non-FISA electronic surveillances, with certain modifications. ~~(S)~~

3. As described below, the FBI has successfully provided unminimized FISA information to the NSA and CIA pursuant to the Court's July 22, 2002 Order. To date, this information has consisted only of the results of Court-authorized electronic surveillance and physical searches [REDACTED]

[REDACTED] Although

authorized by the July 22, 2002 Order, the FBI has not provided NSA or CIA with unminimized information pursuant to the Order from other means of electronic surveillance or physical searches, such as [REDACTED]. ~~(TS)~~

4. For international terrorism cases, FBI technical personnel receive and/or retrieve the data obtained from these searches and surveillances from the [REDACTED]

[REDACTED]

[REDACTED] The FBI then forwards the data described above

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from international terrorism searches and surveillances to the NSA and the CIA.<sup>2</sup> Before providing the data to the CIA, the FBI

(b)(1); (b)(3); (b)(7)(E)

NSA

[REDACTED]

The FBI retains the record copy of the communications. ~~(TS)~~

5. Pursuant to the Court's Order, the FBI electronically forwards to the NSA all international terrorism [REDACTED] that the FBI acquires from [REDACTED]

[REDACTED]

[REDACTED]

The vast majority of the data that the NSA has reviewed was obtained from electronic surveillances and physical searches of non-U.S. person targets located outside the United States. From August 2002 to present, the NSA has issued over [REDACTED] intelligence reports based, at least in part, on raw FBI FISA data relating to international terrorism. The NSA has instructed its employees to include the caveat required by the July 22, 2002 Order on such

<sup>2</sup> As described below, the CIA generally receives data that it specifically requests, rather than the entire universe of terrorism-related [REDACTED] collected by FBI pursuant to FISA. ~~(TS)~~

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reports.<sup>3</sup> In order to ensure that its employees comply with this requirement, the NSA includes this instruction in its FISA minimization training and also has provided its employees with written reporting guidance. ~~(TS)~~

The recipient of the raw FISA data at NSA is NSA's [REDACTED] [REDACTED] in the Data Acquisition Directorate, where it is formatted and placed in a database for analysts in NSA's Office of Counterterrorism to review. Analysts at the Office of Counterterrorism are trained by attorneys from NSA's Office of General Counsel concerning the applicable minimization procedures and the Court's July 22, 2002 Order before they are permitted access to the database containing the raw FISA data. On August 20, 2002, the Attorney General signed procedures governing the NSA's dissemination of FBI FISA information identifying U.S. persons to foreign governments, a copy of which was previously provided to the Court. ~~(S//SI)~~

6. [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

[REDACTED] [REDACTED] The CIA also assists the FBI, at the FBI's request, with translations of communications of

<sup>3</sup> See May 10, 2002 Motion at [REDACTED]. ~~(S)~~

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other international terrorism targets. The CIA receives raw FISA data from the FBI [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ~~(S//NF)~~

On August 20, 2002, the Attorney General signed procedures governing the CIA's dissemination of FISA information to foreign governments, a copy of which was previously provided to the Court. Those procedures apply to data processed and minimized by the CIA. They also apply to data minimized by the FBI and disseminated to the CIA where CIA engages in further analysis of the data. ~~(S)~~

[REDACTED]

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[REDACTED]

[REDACTED] When conducting minimization reviews of NSA and CIA since implementation of the July 22, 2002 Order, OIPR has in particular focused on those agencies' handling of United States person information and, to date, has found that the agencies have acted in conformance with the applicable procedures. Thus, we have concluded that the implementation of the July 22, 2002 Order has had a limited effect on the privacy interests of U.S. persons. ~~(TS//SI)~~

8. Representatives from OIPR visit NSA and CIA to review those agencies' implementation of the Court's Order and adherence to minimization procedures. Both agencies appear to be handling the FISA data properly. OIPR expects to continue such visits on approximately an annual basis, and will continue to report to the Court every six months on the Government's implementation of the July 22, 2002 Order as required. OIPR also reviews the agencies' handling of raw data when it receives requests to initiate or renew FISA authority regarding [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] NSA reports that from August 2002 to present, approximately [REDACTED] percent of its requests for FISA authority (for the FBI to

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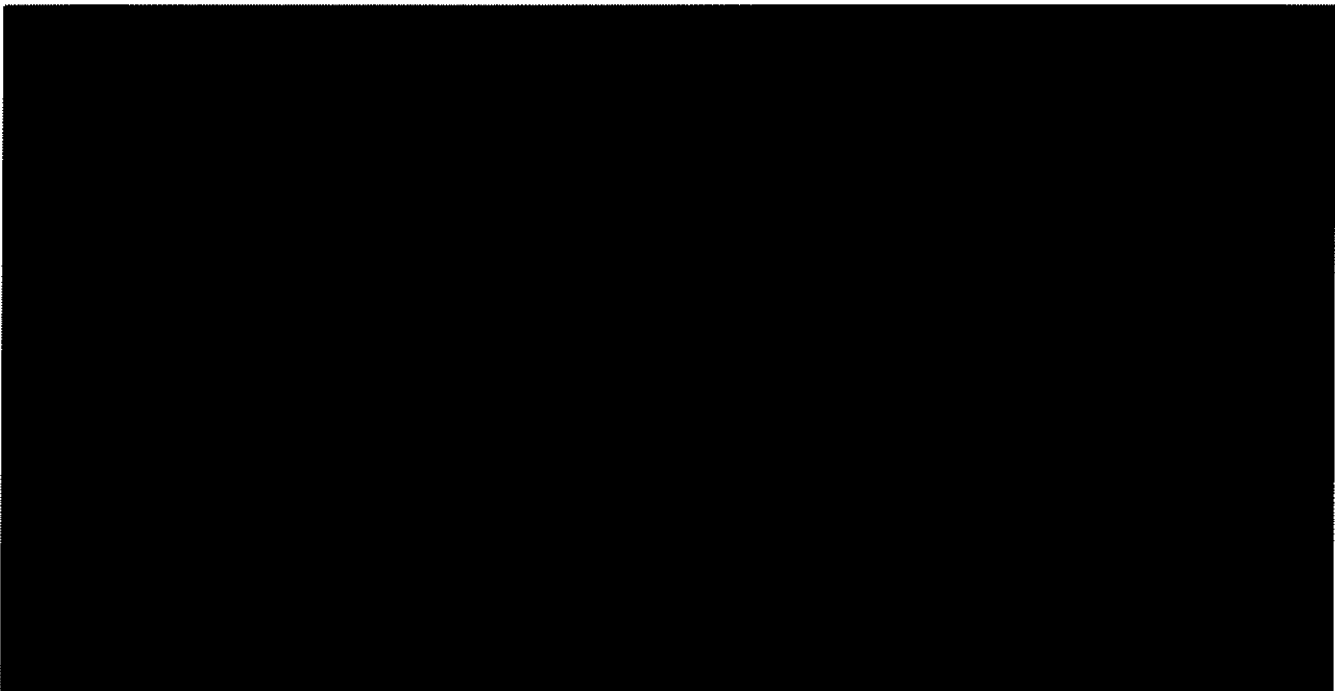
conduct electronic surveillance and physical search of more than [REDACTED] have been based on information obtained through NSA's review of raw data. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, the Department of Justice has submitted reports to Congress as required by law that have included discussions of the Court's July 22, 2002 Order. The Department, the FBI, CIA and NSA have briefed staff members of the Senate Select Committee on Intelligence and staff members of the House Permanent Select Committee on Intelligence on the Court's Order and on implementation thereof. ~~(TS)~~



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[REDACTED]

Also in this regard, the NSA has informed OIPR that:

FBI FISA data is a critical part of NSA's mission targeting international terrorists and terrorist organizations and has yielded highly significant and very timely foreign intelligence information about [REDACTED]

[REDACTED] of international terrorist groups, [REDACTED]

It is presently the source providing the most [REDACTED]

During the last four months of 2003, FBI FISA data contributed in whole or in part to approximately [REDACTED] percent of all end product reporting from NSA's Counterterrorism Office. ~~(TS//SI//NF)~~

[REDACTED]

~~(TS//SI//NF)~~

10. The factual circumstances relied upon by the Government in seeking the initial July 22, 2002 approval to provide raw data directly to the CIA and the NSA have not changed other than those relating to the modified procedures approved by this Court in its

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April 10, 2004 Amended Order. For this reason, the Government seeks a permanent continuation of this authority under the procedures currently in place. ~~(TS)~~

11. This motion has been reviewed for accuracy by Vito T. Potenza, Acting General Counsel, NSA; Valerie Caproni, General Counsel, FBI; and Scott W. Muller, General Counsel, CIA. (U)

WHEREFORE, the United States, by counsel, moves this Court to permit the permanent continuation of its order of July 22, 2002, in the above-captioned matter. (U)

A proposed order effecting this request accompanies this motion. (U)

Respectfully submitted,

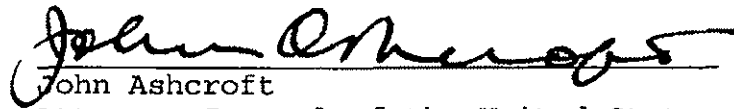
  
\_\_\_\_\_  
James A. Baker  
Counsel for Intelligence Policy  
U.S. Department of Justice

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APPROVAL

I find that this motion satisfies the criteria and requirements set forth in the Foreign Intelligence Surveillance Act of 1978, and hereby approve its filing with the United States Foreign Intelligence Surveillance Court. (U)

  
\_\_\_\_\_  
John Ashcroft  
Attorney General of the United States

OR

\_\_\_\_\_  
James B. Comey  
Deputy Attorney General of the  
United States

Dated: 5-13-04

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MAY 19 2004


U.S. FOREIGN INTELLIGENCE  
SURVEILLANCE COURT

UNITED STATES

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PHYSICAL SEARCH OF INTERNATIONAL :  
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ORDER

This matter is before this Court on the May 14, 2004 motion of the United States of America seeking to continue permanently the procedures approved by the July 22, 2002 Order in the above-captioned docket. Relying upon the Motion and Order issued on July 22, 2002, as well as the facts set forth in the Government's instant motion, approved for filing by the Attorney General of the United States, the Court finds that the requested permanent

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Derived from: Motion to USFISC in the above-captioned docket number  
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continuation of the procedures to the July 22, 2002 Order of this Court is warranted under the facts, and that the procedures pursuant to which the National Security Agency (NSA) and the Central Intelligence Agency (CIA) will process such material meet the definition of minimization procedures set forth in 50 U.S.C. § 1801(h) and 1821(4).

Accordingly, IT IS HEREBY ORDERED that the Federal Bureau of Investigation may continue to provide to the CIA and the NSA unminimized information obtained from searches and surveillances of terrorist targets under FISA, as set forth in the Court's July 22, 2002 Order.

IT IS FURTHER ORDERED that all provisions of the Court's July 22, 2002 Order in docket number [REDACTED] shall remain unchanged.

Filed May 14, 2004 10:30 a.m. E.D.T.  
Date Time

Signed May 19, 2004 7:05 pm E.D.T.  
Date Time

This Order is entered with the unanimous consent of the Judges of this Court.

Colleen Kollar-Kotelly  
Colleen Kollar-Kotelly  
Presiding Judge, United States  
Foreign Intelligence Surveillance Court

I, Karen E. Sutton, Clerk,  
FISC, certify that this document  
is a true and correct copy  
of the original.

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