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



BRIEFING ORDER

On [REDACTED] 2010, the government filed with the Court the Government's Ex Parte Submission of [REDACTED] and Related Procedures, Ex Parte Submission of Amended Minimization Procedures, and Request for an Order Approving [REDACTED] for DNI/AG 702(g) [REDACTED] and on [REDACTED] 2010, the government filed with the Court the Government's Ex Parte Submission of [REDACTED] and Related Procedures, Ex Parte Submission of Amended Minimization Procedures, and Request for an Order Approving [REDACTED] for DNI/AG 702(g) [REDACTED]



The NSA targeting and amended minimization procedures submitted by the government in these matters raise issues of law that have not previously been considered by the Court. For the first time, the government's targeting and minimization procedures specifically authorize NSA to

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as Exhibit A); *see also* Minimization Procedures Used by the National Security Agency in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA, as Amended (“NSA Minimization Procedures”) at 2 (attached [redacted] as Exhibit B).

In light of the finding of the [redacted] exempt under b(7)E

[redacted] exempt under b(7)E

[redacted] exempt under b(7)E concerning [redacted] as well as a related discussion by the Foreign Intelligence Surveillance Court of Review in [redacted] b(7)E exemption

[redacted] here may be b(7)E exemption

Fourth Amendment implications to the government [redacted]

[redacted] b(7)(E) exemption

Moreover, the government has defined the term [redacted] to include US persons, b(7)E exemption which raises the question whether permitting the intentional acquisition of communications of US persons reasonably believed to be located outside the United States is consistent with the requirements of 50 U.S.C. §1881a(b)(3).

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Another significant change to the minimization procedures relates to the provisions that allow NSA to retain, process, and disseminate any communication acquired while a target of 702 collection was inside the United States or after a target has been determined to be a United States person, “to the extent reasonably necessary to counter any imminent threat to human life or the national security that is related to the target, including obtaining authorization against the target pursuant to another section of the Act.” NSA Minimization Procedures at 7-10. Allowing the use of such information may not comport with the statutory framework or with the Fourth Amendment.

The Court is required to review the targeting and minimization procedures to determine whether they are consistent with the requirements of 50 U.S.C. § 1881a(d)(1) and (e)(1). See 50 U.S.C. § 1881a(i)(2)(B) and (C). Section 1881a(d)(1) provides that the targeting procedures must be “reasonably designed” to “ensure that any acquisition authorized under [the certification] is limited to targeting persons reasonably believed to be located outside the United States” and to “prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.” Section 1881a(e)(1) requires that the “minimization procedures [] meet the definition of minimization procedures under section 1801(h) or 1821(4) of [the Act].” In addition, the Court must determine whether the targeting and minimization procedures are consistent with the requirements of the Fourth Amendment. Id. § 1881a(i)(3)(A).

To date, the government has not provided the Court with an adequate legal basis upon which to undertake this review and make the required findings. Therefore, and in accordance with Rule 10(a)(ii) of the Foreign Intelligence Surveillance Court Rules of Procedure, the Court hereby

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ORDERS the government to file a written memorandum of law that addresses the legal issues identified in this Briefing Order and any others that have not previously been presented to the Court. Given the statutorily-imposed deadline for the Court to consider these matters, it is

FURTHER ORDERED that such memorandum must be filed no later than 5:00 pm on Thursday [REDACTED] 2010.

IT IS SO ORDERED.

ENTERED this [REDACTED] 2010.



JOHN D. BATES
Judge, United States Foreign
Intelligence Surveillance Court

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[REDACTED] Deputy Clerk,
FISC, certify that this document
is a true and correct copy of
the original. June 13, 2010
[REDACTED] exempt
under b(6) release