

All redacted information exempt under b(1) and/or b(3) except where otherwise noted.

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

U.S. FOREIGN INTELLIGENCE SURVEILLANCE COURT

UNITED STATES



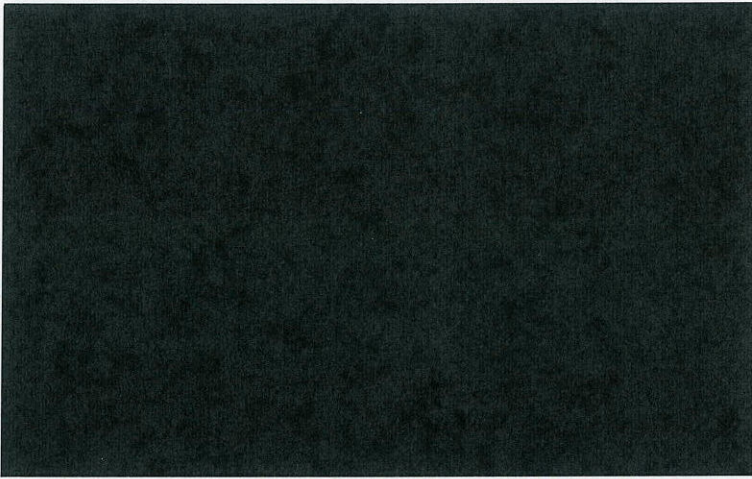
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FOREIGN INTELLIGENCE SURVEILLANCE COURT



CLERK OF COURT

WASHINGTON, D.C.



Docket Number: PR/TT



APPLICATION FOR USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

The United States of America, through the Attorney General, hereby applies to this Court, pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA or the Act), Title 50, United States Code (U.S.C.), §§ 1801-1812, 1841-1846, as amended, for authority to install and use pen registers and trap and trace devices for investigations to protect against the international terrorism activities of the foreign powers listed and

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Classified by: David S. Kris, Assistant Attorney General, NSD, DOJ

Reason: 1.4(c)

~~Declassify on:~~



described in the Declaration of Michael E. Leiter, Director of the National Counterterrorism Center (NCTC) ("NCTC Declaration"), which has been filed with the Court at docket number [REDACTED] and is incorporated herein by reference, specifically [REDACTED]

[REDACTED]

[REDACTED] (collectively, "Foreign Powers"), and unknown persons in the United States and abroad affiliated with the Foreign Powers, which are being conducted by the Federal Bureau of Investigation (FBI) under guidelines the

¹ For purposes of this Application, [REDACTED]

² For purposes of this Application, [REDACTED]

Attorney General has approved pursuant to Executive Order 12333, as amended. ~~(S)~~

The objective of the authority requested in this Application is to enable the National Security Agency (NSA) to discover the Foreign Powers and unknown persons in the United States and abroad affiliated with one or more of the Foreign Powers, and their communications, and to disseminate such information to the FBI and other elements of the United States Intelligence Community and foreign governments, as appropriate. The authority requested in this Application will allow the NSA to collect³ metadata⁴ [REDACTED] described in Tab 1 ("Facilities") to the Declaration of General Keith B. Alexander, U.S. Army, Director of the National Security Agency ("DIRNSA Declaration"), and then to place

[REDACTED]

³ For purposes of this Application, "collect," "collecting," and "collection" include any and all elements of the recording, decoding, and/or capturing of a category or type of metadata (defined below) associated with an Internet communication (defined below), and all inferences drawn from metadata associated with an Internet communication, prior to ingestion into an NSA repository. ~~(TS//SI//NF)~~

⁴ For purposes of this Application, the term "metadata" includes all dialing, routing, addressing, or signaling information associated with an Internet communication (defined below) not concerning the substance, purport, or meaning of the communication and all other information associated with an Internet communication not concerning the substance, purport, or meaning of the communication. As discussed in more detail below, the categories and types of metadata that the Government will collect pursuant to the authority requested are described in Tab 2 attached to the Declaration of General Keith B. Alexander, U.S. Army, Director of the National Security Agency ("DIRNSA Declaration") (attached as Exhibit A). ~~(TS//SI//NF)~~

⁵ For purposes of this Application, [REDACTED]

such information in repositories, databases, and/or archives ("repositories") against which "queries" (described at paragraph 24 of DIRNSA Declaration) may be run to identify operatives of the Foreign Powers by looking for contacts or connections with other individuals who are reasonably suspected to be operatives of one or more of the Foreign Powers and to reveal communications links between such operatives.

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

Specifically, the metadata will be stored and processed in NSA repositories, and NSA will query the metadata using identifiers⁶ that meet a particular standard. That standard, called the "RAS standard," is such that other investigation and analysis have revealed, 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 identifier is associated with one or more of the Foreign Powers; provided, however, that an identifier believed to be used by a U.S. person shall not be regarded as associated with a Foreign Power solely on the basis of activities that are protected by the First Amendment to the Constitution. As appropriate, the results of such queries will be shared within NSA for further signals intelligence (SIGINT)

⁶ For purposes of this Application, the term "identifier" means [REDACTED]

analysis, and ultimately disseminated to support the efforts of the United States, and in particular of the FBI, to detect and prevent terrorist acts against U.S. interests.

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

If authorized, of necessity this surveillance will collect metadata pertaining to [REDACTED] Internet communications, including metadata pertaining to Internet communications of United States persons located within the United States who are not the subject of any FBI investigation. NSA has determined that such broad collection of information is necessary to develop a metadata repository that will enable the analysis NSA needs to perform to find known operatives of the Foreign Powers and to identify unknown persons affiliated with the Foreign Powers, some of whom may communicate with United States persons, and many of whose communications transit the U.S.

Internet infrastructure. ~~(TS//SI//NF)~~

In support of this Application, the Government states as follows:

1. **The Application.** The federal officer seeking to use the pen registers and trap and trace devices covered by this Application is General Keith B. Alexander, U.S. Army, Director of the NSA. Among other things, NSA is responsible for processing and analyzing SIGINT with respect to the activities of international terrorist groups and their agents, and disseminating intelligence product regarding such matters to the U.S. Intelligence Community, including the FBI, and to foreign governments. ~~(S//SI//NF)~~

Set forth below is the certification of the applicant - the Attorney General - that the information likely to be obtained from use of the pen registers and trap and trace devices is relevant to ongoing investigations to protect against international terrorism that are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution. ~~(C)~~

The Act authorizes the Attorney General to approve applications for pen registers and trap and trace devices. The Attorney General's approval of this Application and finding that it satisfies the criteria and requirements for such applications is set forth below. (U)

2. **Supporting documentation.** This Application is supported by: (i) the DIRNSA Declaration, attached as Exhibit A, describing the objective of the authority requested in this Application, the information sought, how NSA will handle the collected metadata, and the Facilities from which the metadata will be collected; (ii) the NCTC Declaration, which has been filed with the Court at docket number [REDACTED] and is incorporated herein by reference, which describes the continued threat of terrorist attack faced by the United States from the Foreign Powers that could result in mass casualties, massive property loss, and disruption of the continuity of government; (iii) the Government's Memorandum of Law and Fact in Support of Application for Pen Registers and Trap and Trace Devices for Foreign Intelligence Purposes ("Memorandum of Law"), attached as Exhibit B; (iv) United States Signals Intelligence

Directive SP0018 (USSID 18), attached as Exhibit C; and (v) correspondence from the Government to the Court filed on [REDACTED] [REDACTED] responding to certain factual and/or legal inquiries made by the Court regarding the Government's proposed application, attached as Exhibit D. (~~TS//SI//NF~~)

3. **Predicated investigations.** The Foreign Powers, and unknown persons in the United States and abroad who are affiliated with the Foreign Powers, are the subjects of numerous FBI predicated investigations being conducted under guidelines approved by the Attorney General pursuant to Executive Order 12333, as amended. As of April 2010, the FBI had approximately [REDACTED] open predicated investigations targeting the Foreign Powers and leaders and agents of the Foreign Powers. Those investigations are being conducted on the basis of activities of the Foreign Powers and unknown persons in the United States and abroad affiliated with the Foreign Powers, and to the extent these subjects of investigation are United States persons, not solely on the basis of activities that are protected by the First Amendment to the Constitution. Additional facts regarding the threat to the United States posed by the Foreign Powers are set forth in the NCTC Declaration. (~~S~~)

4. **Authority sought.** The United States respectfully requests that the Court authorize [REDACTED] use pen registers and trap and trace devices to collect foreign intelligence information at the Facilities. (~~TS//SI//NF~~)

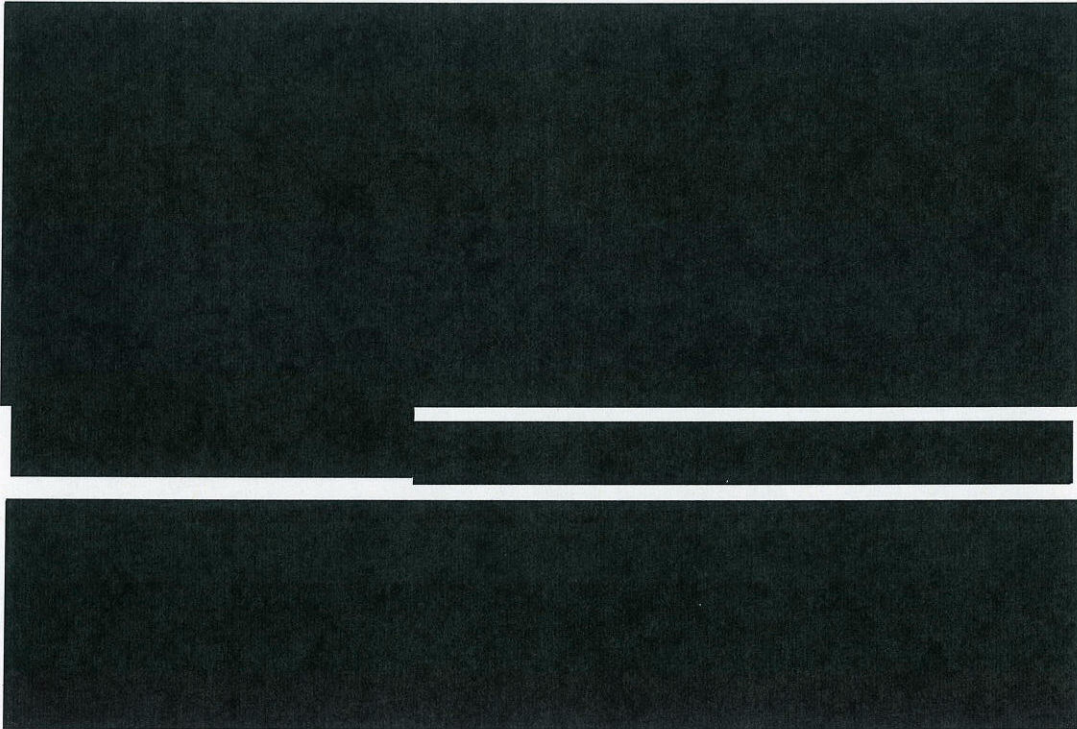
This request is for pen register and trap and trace authority within the United States. All of the collection activity described above will occur in the United States, and will collect metadata from Internet communications that are: (1) between the United States and abroad; (2) between overseas locations; and (3) wholly within the United States. ~~(S)~~

5. Previous applications. In docket number PR/TT [REDACTED] and subsequent docket numbers the Court authorized the installation and use of pen registers and trap and trace devices at certain facilities encompassed by the Facilities. However, the authority sought by this Application differs significantly from that granted in docket number PR/TT [REDACTED] and subsequent docket numbers. ~~(S//SI)~~

6. Description of surveillance authority sought. If this Application is approved, NSA will employ the pen register and trap and trace surveillance authority sought herein as described below. ~~(S)~~

A. Collection of the Metadata. The specified person [REDACTED]

[REDACTED] (collectively, "Specified Persons") that controls each [REDACTED]
[REDACTED]



NSA will only collect the categories and types of metadata described in Tab 2 of the DIRNSA Declaration. ~~(TS//SI//NF)~~

B. Administration of the Metadata Repositories. NSA will store and process the collected metadata in repositories within secure networks under NSA's control.⁸ The metadata will carry unique markings such that software and other controls (including user authentication services) can restrict access to it to authorized personnel who have received appropriate and adequate training with regard to the authority.



⁸ NSA will also maintain the metadata in recovery back-up systems for mission assurance and continuity of operations purposes. NSA will ensure that any access or use of the metadata in the event of any natural disaster, man-made emergency, attack, or other unforeseen event is in compliance with the Court's Order. ~~(TS//SI//NF)~~

Trained and authorized technical personnel⁹ may access the metadata to perform those processes needed to make the metadata usable for intelligence analysis. For example, these processes may include metadata validation; the defeat of the collection, processing, or analysis of metadata associated with [REDACTED] other metadata deemed of little use for metadata analysis purposes; the maintenance of records to demonstrate compliance with the terms of the authority; and the development and testing of technologies to be used with the metadata.

C. [REDACTED] **Other Unwanted Metadata.** Technical personnel may query the metadata using identifiers that have not been RAS-approved (described below) for those purposes described in paragraph B. above, and may share the results of those queries with other authorized personnel responsible for these purposes. An authorized technician may query the metadata with a non-RAS-approved identifier to determine whether that identifier [REDACTED]. If so, the technician could share the results of that query, *i.e.*, the identifier and the fact that [REDACTED] [REDACTED] with authorized personnel (including those responsible for the identification and defeat of [REDACTED] other unwanted metadata from any of NSA's various metadata repositories), but could not share any other information from the results of

⁹ Certain technical personnel, specifically the personnel responsible for [REDACTED] will not receive special training regarding the procedures and restrictions for the collection, storage, analysis, dissemination and retention of the metadata. (~~TS//SI//NF~~)

that query for intelligence analysis purposes. (~~TS//SI//NF~~)

D. Procedures for accessing the metadata for intelligence analysis purposes.

NSA will access the metadata for intelligence analysis purposes as follows:

(a) NSA analysts may conduct contact chaining queries of the metadata, as described at paragraph 24 of the DIRNSA Declaration, for the purpose of obtaining foreign intelligence information using identifiers approved as "seeds" pursuant to the RAS approval process described below. NSA will ensure, through adequate and appropriate technical and management controls, that no queries of the metadata will be conducted for intelligence analysis purposes using an identifier that has not been RAS-approved.

(i) Identifiers to be used as "seeds" with which to query the metadata may be approved by any of the following designated approving officials: 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. Such approval will be given only after the designated approving official has determined that, 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 identifier is associated with a Foreign Power; provided, however, that NSA's Office of General Counsel (OGC) shall first determine that any identifier reasonably believed to be used by a United States person is not regarded as associated with a Foreign Power solely on the basis of activities that are protected by the First Amendment to the Constitution.

(ii) Identifiers that are the subject of electronic surveillance and/or physical search authority of the Foreign Intelligence Surveillance Court (FISC) based on the FISC's finding of probable cause to believe that they are used by agents of a Foreign Power, including any reasonably believed to be used by United States persons, may be deemed RAS-approved for the period of FISC-

authorized electronic surveillance and/physical search without further review and approval by an NSA designated approving official. The preceding sentence shall not apply to identifiers under surveillance pursuant to any certification of the Director of National Intelligence and the Attorney General pursuant to Section 702 of FISA, as added by the FISA Amendments Act of 2008, or pursuant to an Order of the FISC issued under Section 703 or Section 704 of FISA, as added by the FISA Amendments Act of 2008.

(iii) A determination by a designated approving official that an identifier is associated with a Foreign Power shall be effective for 180 days for any identifier reasonably believed to be used by a United States person; and one year for all other identifiers.

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

(b) Whenever the metadata is queried for intelligence analysis purposes or using intelligence analysis query tools, an auditable record of the activity will be generated.

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

E. Sharing, Minimization, and Dissemination Procedures. Results derived from intelligence analysis queries of the metadata may be shared, prior to minimization, for intelligence analysis purposes among NSA analysts.¹⁰ NSA will apply the minimization and dissemination requirements and procedures of Section 7 of USSID 18 to any results from queries of the metadata disseminated outside of NSA in any form. Additionally, prior to disseminating any U.S. person information outside NSA, one of the officials listed in Section 7.3(c) of USSID 18 (i.e., the Director of NSA, the Deputy

¹⁰ In addition, NSA may apply the full range of SIGINT analytic tradecraft, as described in more detail in the DIRNSA Declaration, to the metadata associated with RAS-approved seeds and the metadata associated with contacts or connections within two "hops" of those "seeds." ~~(TS//SI//NF)~~

Director of NSA, the Director of the Signals Intelligence Directorate (SID), the Deputy Director of the SID, the Chief of the Information Sharing Services (ISS) office, the Deputy Chief of the ISS office, and the Senior Operation Officer of the National Security Operations Center) 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.¹¹ Notwithstanding the above requirements, NSA may share results derived from intelligence analysis queries of the metadata, including U.S. person identifying information, with Executive Branch personnel (1) in order to enable them to determine whether the information contains exculpatory or impeachment information or is otherwise discoverable in legal proceedings or (2) to facilitate their lawful oversight functions. ~~(TS//SI//NF)~~

F. **Retention of the Metadata.** Metadata collected by the pen registers and trap and trace devices shall be destroyed no later than five years (60 months) after its initial collection. ~~(TS//SI//NF)~~

G. **Oversight and Compliance.** NSA and the National Security Division of the Department of Justice (NSD/DoJ) will conduct oversight of NSA's activities under the requested authority as outlined below. In addition, the Office of the Director of

¹¹ In the extraordinary event that NSA determines that there is a need to disseminate information identifying a U.S. person that is related to foreign intelligence information, as defined by 50 U.S.C. § 1801(e), other than counterterrorism information and that is necessary to understand the foreign intelligence information or assess its importance, the Government will seek prior approval from the Court. ~~(S)~~

National Intelligence (ODNI) has independent responsibility over the Intelligence Community and must ensure that NSA's intelligence activities are conducted in compliance with the law. Accordingly, ODNI personnel may participate in the oversight activities described below. ~~(TS//SI//NF)~~

(i) NSA's OGC and Office of the Director of Compliance (ODOC) will ensure that personnel with access to the metadata receive appropriate and adequate training and guidance regarding the procedures and restrictions for collection, storage, analysis, dissemination, and retention of the metadata and the results of queries of the metadata and will maintain records of such training. OGC will provide NSD/DoJ with copies of all formal briefing and/or training materials (including all revisions thereto) used to brief/train NSA personnel concerning this authority.

(ii) NSA's ODOC will monitor the implementation and use of the software and other controls (including user authentication services) and the logging of auditable information referenced above.

(iii) NSA's OGC will consult with NSD/DoJ on all significant legal opinions that relate to the interpretation, scope, and/or implementation of this authority. When operationally practicable, such consultation shall occur in advance; otherwise NSD will be notified as soon as practicable.

(iv) At least once during the authorization period, NSA's OGC, ODOC, NSD/DoJ, and any other appropriate NSA representatives will meet for the purpose of assessing compliance with this Court's orders. Included in this meeting will be a review of the metadata collected to ensure that only those categories or types of information described in Tab 2 to the DIRNSA Declaration are being collected. The results of this meeting will be reduced to writing and submitted to the Court as part of any application to renew or reinstate the authority requested herein.

(v) At least once during the authorization period, NSD/DoJ will meet with NSA's Office of the Inspector General to discuss their respective oversight responsibilities and assess NSA's compliance with the Court's orders.

(vi) At least once during the authorization period, NSA's OGC and

NSD/DoJ will review a sample of the justifications for RAS approvals for identifiers used to query the metadata.

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

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

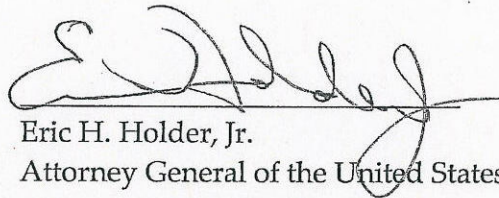
H. **Reporting.** Approximately every thirty days, NSA shall file with the Court a report that includes a discussion of the queries made since the last report and NSA's application of the RAS standard. In addition, should the United States seek renewal of the requested authority, NSA shall also include in its report detailed information regarding any new facility proposed to be added to such authority and a description of any changes proposed in the collection methods, [REDACTED] of the pen registers and trap and trace devices. ~~(TS//SI//NF)~~

7. The Court is requested to authorize the installation and use of pen registers and trap and trace devices as described herein for a period of **ninety days** and to direct that the Specified Persons furnish NSA with any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen registers and trap and trace devices, for purposes of targeting the Foreign Powers and unknown persons in the United States and abroad affiliated with one or more of the Foreign Powers in such a manner as will protect their secrecy and produce a minimum amount of interference with the services the Specified Persons are providing to their customers. ~~(S//SI//NF)~~

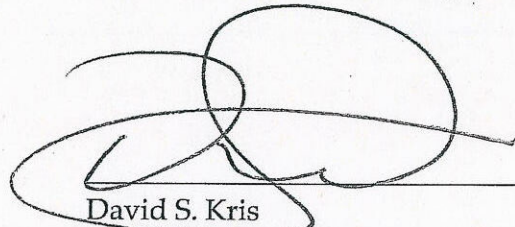
8. On [REDACTED] when the Order in docket number PR/TT [REDACTED] expired, the Court entered a Supplemental Order in docket number PR/TT [REDACTED] and previous dockets, directing that the Government "shall not access the information obtained pursuant to the FISC's orders in this matter for any analytic or investigative purpose," unless the access is necessary to protect against an imminent threat to human life. Supplemental Order, Docket Number PR/TT [REDACTED] at 4-5. As set forth more fully in the Memorandum of Law, the Government has concluded that the information collected under docket number PR/TT [REDACTED] and previous dockets is information that may be collected pursuant to an order under 50 U.S.C. § 1842. On that basis, the Government has further concluded that the Court may issue an order under 50 U.S.C. § 1842 authorizing the use of information collected under docket number PR/TT [REDACTED] and previous dockets. As set forth in the DIRNSA Declaration, "[t]he ability of NSA to access the information collected under docket number PR/TT [REDACTED] and previous dockets is vital to NSA's ability to carry out its counterterrorism intelligence mission" and the inability to access the information would create "a substantial gap in the information available to NSA." DIRNSA Decl. at 10 n.6. Therefore, the Government also requests that the Court authorize, pursuant to 50 U.S.C. § 1842, NSA to access and treat the information collected in connection with docket number PR/TT [REDACTED] and previous dockets in accordance with the procedures set forth above. (~~TS//SI//NF~~)

WHEREFORE, the United States submits that this Application satisfies the criteria and requirements of the Act, as amended, and therefore requests that this Court authorize the installation and use of the pen registers and trap and trace devices described herein, and enter the proposed orders that accompany this Application. (U)

Respectfully submitted,



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



David S. Kris
Assistant Attorney General
for National Security
U.S. Department of Justice

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VERIFICATION

I declare under penalty of perjury that the facts set forth in this Application are true and correct. Executed pursuant to Title 28, United States Code, § 1746, on



(U)

A handwritten signature in black ink, appearing to read 'K. B. Alexander', written over a horizontal line.

KEITH B. ALEXANDER
General, U.S. Army
Director, National Security Agency

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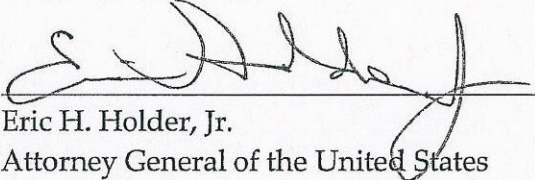
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CERTIFICATION

I certify that the information likely to be obtained from the pen registers and trap and trace devices requested in this Application regarding [REDACTED]

[REDACTED]

is relevant to ongoing investigations to protect against international terrorism that are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution. ~~(S)~~

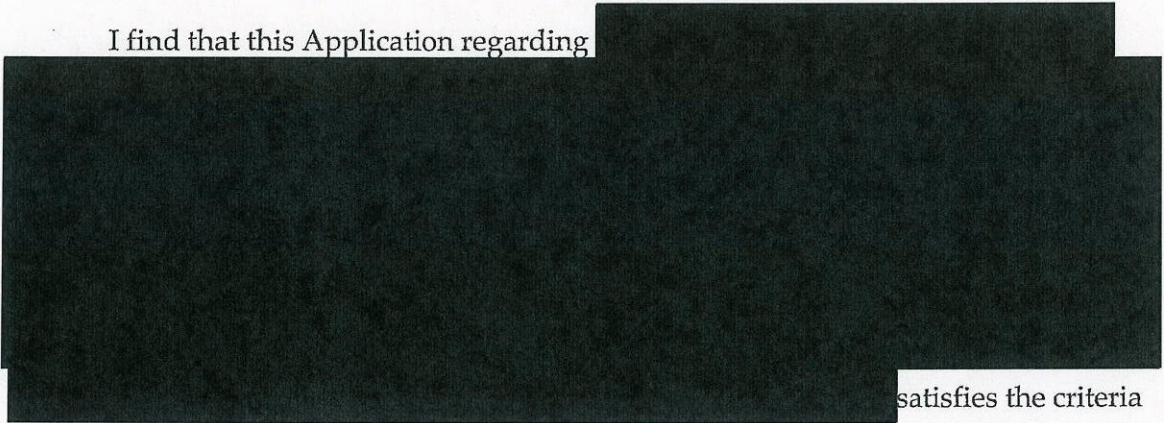

Eric H. Holder, Jr.
Attorney General of the United States

[REDACTED]

Date

ATTORNEY GENERAL APPROVAL

I find that this Application regarding



satisfies the criteria

and requirements for such applications set forth in the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. §§ 1801-1812, 1841-1846, as amended, and hereby approve its filing with the Foreign Intelligence Surveillance Court. ~~(S)~~

A handwritten signature in black ink, which appears to read "Eric H. Holder, Jr.", is written over a horizontal line.

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



Date