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

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

[redacted]

Docket Number: PR/TT [redacted]

**PRIMARY ORDER**

A verified application having been made by a designated attorney for the Government and approved by the Attorney General of the United States for an order authorizing installation and use of pen registers and trap and trace devices pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA or the Act), Title 50, United States Code (U.S.C.), §§ 1801-1811, 1841-1846, and full consideration having been given to the matters set forth therein, the Court finds that:



Derived from: Pleadings in the above-captioned docket
Declassify on: [redacted]

1. The Attorney General is authorized to approve applications for pen registers and trap and trace devices under the Act, and the Attorney General or a designated attorney for the Government is authorized to make such applications under the Act.

2. The applicant has certified that the information likely to be obtained from the requested 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.

3. [redacted]

[redacted]

[redacted]

[redacted]

are the subjects of national security investigations conducted by the Federal Bureau of Investigation (FBI) under guidelines approved by the Attorney General pursuant to Executive Order 12333, as amended.

4. The pen registers and trap and trace devices shall be [redacted] described in Tab 1 to the Declaration of [redacted] Chief, Special FISA Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate (SID), NSA, which is attached to the Government's Application as Exhibit A.[3]

WHEREFORE, relying on and adopting the conclusions and analysis set out in its July 14, 2004, Opinion and Order in docket number PR/TT [redacted] and the Supplemental Opinion issued on [redacted] in docket number PR/TT [redacted] which the Court finds applicable to each authorized [redacted] as described in Tab 1 to Exhibit A of the Application, the Court finds that the Application of the United States to install and use pen registers and trap and trace devices, as described in the

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[3] [redacted]

Application, satisfies the requirements of the Act and specifically of 50 U.S.C. § 1842 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) Installation and use of pen registers and trap and trace devices as requested in the Government's Application are authorized for a period of **ninety days** from the date of this Order, unless otherwise ordered by this Court, as follows: installation and use of pen registers and/or trap and trace devices as described above to collect all addressing and routing information reasonably likely to identify the sources or destinations of the electronic communications identified above on the [redacted] identified above, including the "to," "from," "cc," and "bcc" fields for those communications [redacted]

[redacted]

Collection of the contents of such communications as defined by 18 U.S.C. § 2510(8) is not authorized.

(2) The authority granted is within the United States.

(3) As requested in the Application, [redacted] (specified persons) are directed to furnish the NSA with any information, facilities, or technical assistance necessary to accomplish the installation and operation of pen registers and trap and trace devices, for purposes of targeting [redacted] in such a manner as will protect their secrecy and produce a minimum amount of interference with the services each specified person is providing to its subscribers. Each specified person shall not disclose the existence of the investigation or of the pen registers and trap and trace devices to any person, unless or until ordered by the Court, and shall maintain all records concerning the pen registers and trap and

trace devices, or the aid furnished to the NSA, under the security procedures approved by the Attorney General and the Director of Central Intelligence that have previously been or will be furnished to each specified person and are on file with this Court.

(4) The NSA shall compensate the specified persons referred to above for reasonable expenses incurred in providing such assistance in connection with the installation and use of the pen registers and trap and trace devices authorized herein.

(5) The NSA shall follow the following procedures and restrictions regarding the storage, accessing, and disseminating of information obtained through use of the pen registers and trap and trace devices authorized herein:

a. The NSA shall store such information in a manner that ensures that it will not be commingled with other data.[4]

b. The ability to retrieve information derived from the pen register and trap and trace devices shall be limited to [redacted] specially cleared analysts

[4] [redacted]

and to specially cleared technical personnel.[5] The NSA shall ensure that the mechanism for accessing such information will automatically generate a log of auditing information for each occasion when the information is accessed, to include the accessing user's login, IP address, date and time, and retrieval request.

c. Such information shall be accessed only through queries using the contact chaining [redacted] described at page 43 of the Court's July 14, 2004, Opinion and Order in docket number PR/TT [redacted] Such queries shall be performed only on the basis of a particular known [redacted] after the NSA has concluded, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, that there are facts giving rise to a reasonable, articulable suspicion that such [redacted] is associated with [redacted] provided, however, that

[5] The Court understands that certain processes must be performed by NSA technical personnel in order to make the metadata collected pursuant to this Order usable by analysts. The restrictions on access contained in this Order shall not apply to those processes.

an [redacted] believed to be used by a U.S. person shall not be regarded as [redacted] solely on the basis of activities that are protected by the First Amendment to the Constitution. **Further, all metadata queries shall be performed in accordance with this Court's** [redacted] **Orders in docket numbers PR/TT** [redacted]**, PR/TT** [redacted] **and PR/TT** [redacted]**.** Queries shall only be conducted with the approval of one of the following twenty-three NSA officials: the Chief, Special Foreign Intelligence Surveillance Act (FISA) Oversight and Processing, Oversight and Compliance, Signals Intelligence Directorate (SID), NSA; 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. **E-mail** [redacted] **that are the subject of electronic surveillance and/or physical search authorized by the Foreign Intelligence Surveillance Court (FISC) based on the FISC's finding of probable cause to believe that they are used by agents of** [redacted]

[redacted] including those used by U.S. persons, may be deemed approved for metadata querying without approval of an NSA official. The preceding sentence is not meant to apply to e-mail [redacted] under surveillance pursuant to any certification of the Director of National Intelligence and the Attorney General, pursuant to Section 105B of FISA as added by the Protect America Act of 2007, or Section 702 of FISA, as added by the FISA Amendments Act of 2008. Nor is it intended to apply to e-mail [redacted] under surveillance pursuant to an Order of this Court issued under Section 703 or Section 704 of FISA, as added by the FISA Amendments Act of 2008.

d. The Court understands that the processes described in paragraph (c)(i) and (c)(ii) at pages 7-11 of the 90-Day Report attached to the Application at Tab B are no longer in use. The Government shall not resume use of either of those processes without obtaining prior Court approval.

e. Because the implementation of this authority involves distinctive legal considerations, NSA's Office of General Counsel shall:

i) ensure that analysts with the ability to access such information receive appropriate training

and guidance regarding the querying standard set out in paragraph c. above, as well as other procedures and restrictions regarding the retrieval, storage, and dissemination of such information;

ii) monitor the designation of individuals with access to such information under paragraph b. above and the functioning of the automatic logging of auditing information required by paragraph b. above;

iii) to ensure appropriate consideration of any First Amendment issues, review and approve proposed queries of metadata in online storage based on seed accounts used by U.S. persons;[6] and

iv) at least twice during the 90-day authorized period of surveillance, conduct random spot checks on [redacted] to ensure that the collection is functioning as authorized by the Court. Such spot checks shall include an examination of a sample of the data.

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[6] The Court notes that, in conventional pen register/trap and trace surveillances, there is judicial review of the application before any particular e-mail account is targeted. In this case, the analogous decision to use a particular e-mail account as a seed account takes place without prior judicial review. In these circumstances, it shall be incumbent on NSA's Office of General Counsel to review the legal adequacy for the bases of such queries, including the First Amendment proviso, set out in paragraph c. above.

f. The NSA shall apply the Attorney General-approved guidelines in United States Signals Intelligence Directive 18 (Attachment D to the application in docket number PR/TT [redacted] to minimize information concerning U.S. persons obtained from the pen registers and trap and trace devices authorized herein. Prior to disseminating any U.S. person information outside of the NSA, the Chief of Information Sharing Services in the NSA's Signals Intelligence Directorate shall determine that the information is related to counterterrorism information and is necessary to understand the counterterrorism information or to assess its importance.

g. Information obtained from the authorized pen registers and trap and trace devices shall be available online for querying, as described in paragraphs b. and c. above, for four and one-half years. Metadata shall be destroyed no later than four and one-half years after its initial collection.

h. Every thirty days during the authorized period of surveillance, NSA shall file with the Court a report that includes: (i) a discussion of the queries that have been made since the prior report to the Court and the NSA's application of the standard set out in paragraph c. above

to those queries; and (ii) any changes in the description of the [redacted] described above [redacted]

i. **Additional Oversight Mechanisms.** In addition, the Government shall implement the following additional oversight mechanisms to ensure compliance with this Order:

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 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.

iii) 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.

iv) 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.

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

vi) At least once every ninety days, NSA's OGC and NSD shall review a sample of the justifications for querying the metadata, including e-mail [redacted] [redacted] placed on an alert list.

In addition, should the United States seek renewal of these authorities, at that time it shall file a report that includes: (i) detailed information regarding any new facilities proposed to be added to such authority; and (ii) any changes in the proposed means of collection, [redacted] of the pen registers and/or trap and trace devices.

Signed [redacted] P04:06 E.T.
Date Time

This authorization regarding [redacted] expires on the [redacted] at 5 p.m., Eastern Time.

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