Approved for public release. All withheld information exempt under b(1) and b(3) except as otherwise noted.

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

2011 JUL 14 PM 12: 40

[redacted]

MOTION FOR ORDERS EXTENDING TIME LIMITS PURSUANT TO 50 U.S.C. § 1881a(j)(2) ~~(S)~~

THE UNITED STATES OF AMERICA, through the undersigned Department of Justice attorney, respectfully moves the Court to issue orders pursuant to 50 U.S.C. § 1881a(j)(2) of the Foreign Intelligence Surveillance Act of 1978, as amended (the Act), extending to September 20, 2011, the time limits for the Court to complete its review of and issue orders concerning DNI/AG 702(g) Certifications [redacted], and the amendments to their respective predecessor certifications. As discussed below, the government respectfully submits that there is good cause for the extensions of the time limits, and that such extensions would be consistent with national security. ~~(S//OC/NF)~~

~~Classified by: Lisa O. Monaco, Assistant Attorney General, NSD, DOJ~~
~~Reason: 1.4(c)~~
~~Declassify on: 14 July 2036~~

I. Procedural Background ~~(S)~~

A. The 2011 Reauthorization Certifications and Related Amendments ~~(S)~~

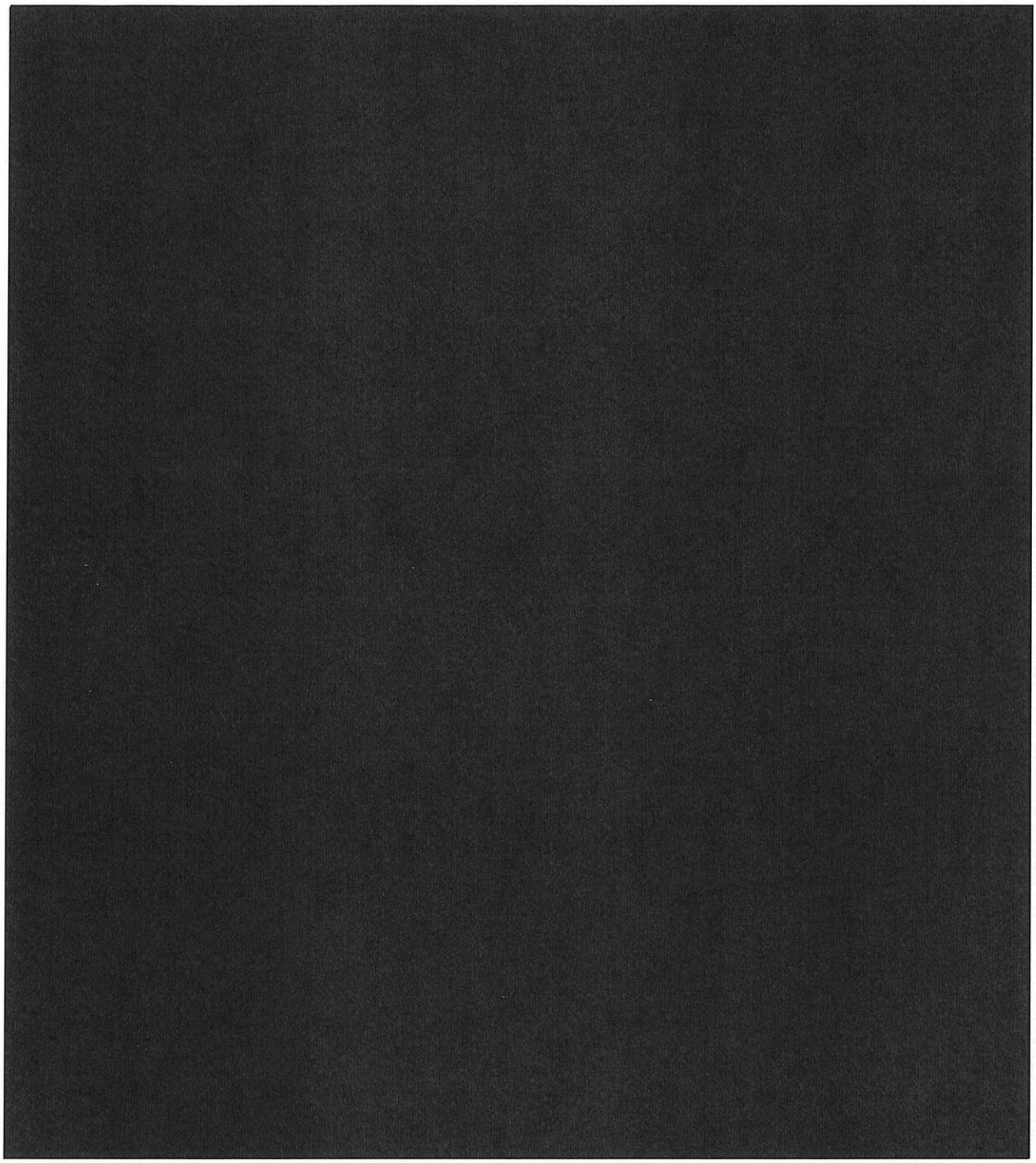
On April 20, 2011, the government submitted to the Court DNI/AG 702(g) Certificatio[redacted]. Included with DNI/AG 702(g) Certification [redacted] were the targeting and minimization procedures to be used by the National Security Agency (NSA), Federal Bureau of Investigation (FBI), and Central Intelligence Agency (CIA) under that certification. DNI/AG 702(g) Certificatio[redacted] reauthorizes DNI/AG 702(g) Certificatio[redacted], which was set to expire on [redacted] 2011. In accordance with 50 U.S.C. § 1881a(g)(2)(D)(i), DNI/AG 702(g) Certification [redacted] also included an effective date for the authorization that is at least thirty days after its submission to the Court -- i.e., [redacted] 2011. ~~(S//OC/NF)~~

DNI/AG 702(g) Certification [redacted] also included amendments to its predecessor certifications, DNI/AG 702(g) Certifications [redacted]. Specifically, these amendments authorize the use of the minimization procedures attached as Exhibits B and E to DNI/AG 702(g) Certification [redacted] in connection with foreign intelligence

information acquired in accordance with DNI/AG 702(g) Certifications [redacted]

[redacted] These amendments also have an effective date of [redacted] 2011. ~~(S//OC/NF)~~

[redacted]



B. Two Matters Reported to the Court ~~(S)~~

1. Overcollection of [redacted] ~~(TS//SI//NF)~~

On April 19, 2011, the government filed with the Court pursuant to Rule 13(b) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, a preliminary notice of two compliance incidents, both of which concern NSA's collection of [redacted] that, in addition to targeted communications, contain communications that are not to, from, or about selectors tasked for acquisition in accordance with section 702 of the Act. One of these incidents concerns NSA's overcollection of [redacted] because of [redacted].[1] The government respectfully incorporates herein by reference this notice dated April 19, 2011. ~~(TS//SI//OC/NF)~~

2. Clarification Concerning Upstream Collection ~~(TS//SI//NF)~~

On May 2, 2011, the government filed, pursuant to Rule 13(a) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, a preliminary notice clarifying certain facts concerning NSA's upstream collection of electronic communications. Specifically, this notice provided the Court with additional details concerning one specified category of Internet communications NSA acquires through its upstream collection -- [redacted]

[1] The other incident reported in this notice concerned NSA's overcollection of [redacted]. On March 15, 2011, NSA terminated collection [redacted]. ~~(TS//SI//OC/NF)~~

[redacted]." As stated in the notice, at that time, NSA, NSD, and ODNI were still reviewing this matter and assessing its import, including what effect, if any, this type of Internet communications collection has on the efficacy of the means by which NSA prevents the intentional acquisition of Internet communications where the sender and all intended recipients are known at the time of acquisition to be located in the United States. The government respectfully incorporates herein by reference this notice dated May 2, 2011. ~~(TS//SI//OC/NF)~~

C. Prior Motion to Extend ~~(S)~~

On May 5, 2011, the government filed with the Court a motion to extend the time limits for the Court to complete its review of DNI/AG 702(g) Certificatior [redacted]. On May 9, 2011, the Court approved this motion, extending until July 22, 2011, the time limits to complete its review of these certifications. The government respectfully incorporates herein by reference the government's motion of May 5, 2011, and the Court's orders of May 9, 2011, approving this motion. ~~(S)~~

D. Subsequent Filings with the Court ~~(S)~~

On May 9, 2011, the Court issued a briefing order that required the government to submit responses to specific questions about both the [redacted] and upstream collection matters described above. In accordance with the Court's order, the government filed its response on June 1, 2011. On June 17, 2011, the Court provided the government with additional questions about the government's representations

regarding aspects of NSA's upstream collection. The government filed responses to these additional questions on June 28, 2011. The government respectfully incorporates herein by reference these four documents. ~~(TS//SI//OC/NF)~~

II. The Issuance of Orders Under 50 U.S.C. § 1881a(j)(2) is Appropriate in These Cases ~~(S)~~

Upon the government's submission of DNI/AG 702(g) Certification [redacted] on April 20, 2011, [redacted] the thirty-day time periods in which the Court is required to review the certifications began to run. See 50 U.S.C. § 1881a(i)(1)(B). The thirty-day time periods for the Court to review the amendments to the predecessor certifications also began to run on those same dates. See id. § 1881a(i)(C). Accordingly, the time limit for the Court to complete its review of DNI/AG 702(g) Certification [redacted] and the amendments to its predecessor certifications was May 20, 2011. [redacted]. ~~(S//OC/NF)~~

The Court may, however, "extend[] that time as necessary for good cause in a manner consistent with national security." 50 U.S.C. § 1881a(j)(2). As discussed above, by orders dated May 9, 2011, the Court extended the time limits until July 22, 2011, to review DNI/AG 702(g) Certifications [redacted] and the amendments to their respective prior certifications. For the following reasons, the government

respectfully submits that there is good cause for further extensions of the time limits, and that such extensions would be consistent with national security. ~~(S//OC/NF)~~

A. There Is Good Cause for the Court to Further Extend the Time Limits for Its Review ~~(S)~~

The government believes that there is good cause for the Court to further extend the deadlines for the Court to complete its review of DNI/AG 702(g) Certifications [redacted], and the amendments to their respective predecessor certifications. Specifically, as explained below, the government intends to supplement the record concerning the matters discussed above in a manner that will aid the Court in its review and in making the determinations necessary to issue orders under 50 U.S.C. § 1881a(i)(3). However, the government will not be in a position to supplement the record until after July 22, 2011. ~~(S//OC/NF)~~

On July 8, 2011, the Court orally invited the Government to supplement the record in this matter by providing additional information further responding to the Court's June 17 questions about the nature and scope of the types of communications NSA acquires through its upstream collection systems. The Government is currently in the process of compiling this additional information. In addition, the Government is examining whether enhancements to NSA's systems or processes could be made to further ensure that information acquired through NSA's upstream collection is handled in accordance with the requirements of the Act. However, neither of these efforts will be completed until after July 22, 2011. ~~(S//OC/NF)~~

B. Extending the Time Limit for the Court's Review Is Consistent with National Security. ~~(S)~~

As this Court has recognized, "[t]he government's national security interest in conducting these acquisitions [under section 702] 'is of the highest order of magnitude.'" In re DNI/AG Certification [redacted], No. 702(i)-08-01, Mem. Op. at 37 (USFISC Sept. 4, 2008) (quoting In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004, 1012 (FISA Ct. Rev. 2008)). For example, the foreign intelligence information the government acquires under DNI/AG 702(g) Certification [redacted] DNI/AG 702(g) Certificatic [redacted] Affidavit of Lt. General Keith B. Alexander, Director, NSA, ¶ 6. ~~(S//OC/NF)~~

Were the Court to issue orders under 50 U.S.C. § 1881a(j)(2) extending the time limits for its review of the certifications and related amendments so that the Court could consider these additional materials, the authorizations in the certifications being reauthorized, DNI/AG 702(g) Certification [redacted], would, by operation of 50 U.S.C. § 1881a(i)(5)(B), continue despite their expiration dates.[2] The

[2] The government's filing of DNI/AG 702(g) Certification [redacted] on April 20, 2011, [redacted], comported with 50 U.S.C. § 1881a(i)(5)(A), which requires that if the government seeks to reauthorize an authorization issued under 50 U.S.C. § 1881a(a), the government must, to the extent practicable, submit to the Court a new certification executed under 50 U.S.C. § 1881a(g), with supporting documents, at least thirty days before the expiration of the certification being reauthorized. If a new certification is filed in accordance with 50 U.S.C. § 1881a(i)(5)(A), 50 U.S.C. § 1881a(i)(5)(B) provides that the existing certification being reauthorized shall

government respectfully submits that this result would be consistent with national security, because it would allow the government's acquisition of vitally important foreign intelligence information under DNI/AG 702(g) Certificatio[redacted]; [redacted] to continue pending the completion of the Court's review of the reauthorization certifications, DNI/AG 702(g) Certificatio[redacted] respectively. ~~(S//OC/NF)~~

The government further submits that it would be consistent with national security for the Court to extend its consideration of the above-discussed amendments, which authorize the use of the NSA and CIA minimization procedures submitted with DNI/AG 702(g) Certifications [redacted] in connection with foreign intelligence information acquired in accordance with the predecessors of those certifications. The NSA and CIA minimization procedures currently approved for use under those predecessor certifications, however, differ in some respects from the NSA and CIA minimization procedures submitted with DNI/AG 702(g) Certifications [redacted]. The government believes that authorizing NSA and CIA to use a single set of minimization procedures (i.e., each agency's respective minimization procedures submitted with DNI/AG 702(g) Certifications [redacted] for the entirety of each agency's holdings of foreign intelligence information acquired under section 702 will result in a more uniform application of minimization standards

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remain in effect, notwithstanding its expiration date, until the Court issues an order under 50 U.S.C. § 1881a(i)(3) with respect to the new certification. ~~(S)~~

to that information. Authorizing each agency to use a single set of minimization procedures for that information also will significantly simplify oversight of each agency's adherence to those standards. ~~(S//OC/NF)~~

III. Conclusion ~~(S)~~

For the foregoing reasons, the government respectfully submits that there is good cause for the Court to issue orders under 50 U.S.C. § 1881a(j)(2) extending to September 20, 2011, the time limit for the Court to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certification [redacted] and the amendments to their respective predecessor certifications, and that such an extension would be consistent with national security. The government also requests that the Court issue the proposed Notice of Extension, attached herewith. ~~(S//OC/NF)~~

Respectfully submitted,

[redacted]

[redacted]

National Security Division
United States Department of Justice

Approved for public release. All withheld information exempt under b(1) and b(3) except as otherwise noted.

APPROVAL

I find that this motion regarding DNI/AG 702(g) Certification [redacted] and the amendments to their respective predecessor certifications 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. ~~(S)~~

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