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DNI Clapper Declassifies Additional Intelligence Community Documents Regarding Collection Under Section 501 of the Foreign Intelligence Surveillance Act

October 28, 2013

In June of this year, President Obama directed me to declassify and make public as much information as possible about certain sensitive intelligence collection programs undertaken under the authority of the Foreign Intelligence Surveillance Act (FISA) while being mindful of the need to protect national security. Consistent with this directive, in September 2013, I authorized the declassification and public release of a number of documents pertaining to the Government's collection of bulk telephony metadata under Section 501 of the FISA, as amended by Section 215 of the USA PATRIOT Act (Section 215). Today I am authorizing the declassification and public release of a number of additional documents relating to collection under Section 215. These documents were properly classified, and their declassification is not done lightly. I have determined, however, that the harm to national security from the release of these documents is outweighed by the public interest.

Release of these documents reflects the Executive Branch's continued commitment to making information about this intelligence collection program publicly available when appropriate and consistent with the national security of the United States. Additionally, they demonstrate the extent to which the Intelligence Community kept both Congress and the Foreign Intelligence Surveillance Court apprised of the status of the collection program under Section 215. Some information has been redacted because these documents include discussion of matters that continue to be properly classified for national security reasons and the harm to national security would be great if disclosed. These documents will be made available at the website of the Office of the Director of National Intelligence and at ICOntheRecord.tumblr.com, the public website dedicated to fostering greater public visibility into the intelligence activities of the U.S. Government.

James R. Clapper Director of National Intelligence

1. February 25, 2009 NSA notification memorandum to the House Permanent Select Committee on Intelligence (HPSCI) of compliance incidents identified during an on-going NSA-initiated End-to-End review of its collection of bulk telephony metadata pursuant to Section 215 authorities.

2. March 2009 Internal NSA Memorandum of Understanding required for access and query privileges of data collected through NSA's bulk telephony metadata program under Section 215 authorities.

3. May 7, 2009 NSA notification memorandum to the Senate Select Committee on Intelligence (SSCI) and HPSCI on the status of the on-going NSA-initiated End-to-End review of its collection of bulk telephony metadata pursuant to Section 215 authorities.

4. July 2, 2009 Letter from the Department of Justice (DoJ) to the United States Foreign Intelligence Surveillance Court (FISC), providing notice of the production of NSA's June 25, 2009 Business Records Foreign Intelligence Surveillance Act (FISA) End-to-End Review Report to the Congressional Intelligence and Judiciary Committees.

5. September 10, 2009 NSA notification memorandum to SSCI of presentations made to several FISC judges regarding NSA's bulk telephony metadata program under Section 215 authorities and of the FISC granting the government's request to reauthorize the bulk telephony metadata program and restoring to NSA the authority to query the metadata upon a Reasonable Articulable Suspicion standard without seeking Court approval on a case-by-case basis.

6. October 21, 2009 Joint Statement for the Record by the Director of the National Counterterrorism Center and the Associate Deputy Director for Counterterrorism of the NSA, to HPSCI providing information relating to NSA's bulk telephony metadata program under Section 215 authorities for the USA PATRIOT Act reauthorization.

7. December 17, 2009 Letters from DoJ to Representatives Bobby Scott, John Conyers, and Jerrold Nadler providing notice of Executive branch efforts with the Intelligence Committees to make a detailed report on NSA's bulk telephony metadata program under Section 215 authorities available to all Members of Congress.

8. August 16, 2010 Cover Letter from DoJ for submission of several documents to the Congressional Intelligence and Judiciary Committees relating to NSA collection of bulk telephony metadata under Section 501 of the FISA, as amended by Section 215 of the USA PATRIOT Act.

9. April 1, 2011 Memorandum from NSA to SSCI regarding NSA's receipt of cell site location information test results.

10. September 1, 2011 NSA notification memorandum to the House and Senate Committees on the Judiciary on NSA's collection of telephony metadata under Section 501 of FISA.



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All redacted information exempt under (b)(1) and (b)(3) except as otherwise noted.

FORT GEORGE G. MEADE, MARYLAND 20755-6000 Serial: GC/009/09 25 February 2009

MEMORANDUM FOR STAFF DIRECTOR, HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U) Congressional Notification - Incidents of Noncompliance -INFORMATION MEMORANDUM

(U) The purpose of this correspondence is to notify the Committee of compliance matters that are currently under review by the Foreign Intelligence Surveillance Court and which relate to subjects of prior testimony to the Congress.

(TS//SI//NF) Under two separate sets of orders issued by the Court pursuant to Sections 1841 and 1861 of the Foreign Intelligence Surveillance Act of 1978, as amended ("FISA"), the National Security Agency ("NSA" or "Agency") receives telephony and electronic communications metadata in order to produce foreign intelligence related to the activities of

On 15 January 2009, the Department of Justice ("DoJ") notified the Court that an automated alert process NSA used to compare the telephony metadata against a list of telephone identifiers that were of foreign intelligence interest to NSA's counterterrorism personnel did not operate in conformity with the Court's orders. The Government also advised the Court that NSA had incorrectly described the alert process in prior reports to the Court. As part of a comprehensive review ordered by the Director of NSA, the Agency identified another automated process used to query the telephony metadata that also did not operate in conformity with the Court's orders. The review also identified some manually entered queries that were noncompliant with the Court's orders. None of the compliance incidents resulted in the dissemination of any reporting from NSA to any other department or agency. Upon discovery of these compliance incidents, NSA immediately made changes to its processes to ensure that the Agency is handling and querying the telephony metadata in accordance with the Court's orders. The corrective measures include implementation of controls that prevent any automated process from querying the telephony metadata NSA receives pursuant to the Court's orders and which also guard against manual querying errors.

> Derived From: NSA/CSSM 1-52 Dated: 20070108 Declassify On: 20320108 TOP SECRET//COMINT//NOFORN

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(TS//SL//NF) In response to the Government's compliance notice, on 28 January 2009, the Court directed the Government to file a brief and supporting documentation describing how the compliance and misreporting incidents occurred so the Court can determine what remedial action, if any, is warranted. Since the Court was aware that there are similarities between NSA's processing of telephony metadata and electronic communications metadata under separate orders, the Court also directed the Government to determine whether NSA has been processing the electronic communications metadata in accordance with the terms of the Court's orders for this category of material. As part of this review, the Government concluded that NSA was processing the electronic communications metadata in accordance with the terms of the Court's orders, with one exception. The review identified one particular process that the Government concluded was not in conformity with the Court's order. NSA had employed the process in a small number of cases to approve queries against the electronic communications metadata. Although the Agency had previously reported the process to the Court this process, too, has been discontinued.

(S) NSA and DoJ have already identified a number of steps designed to improve the Agency's ability to comply with the relevant orders and implementation of these changes has begun. Also, in addition to notifying the Court, the Government has notified a number of senior Executive Branch officials about these compliance matters. Officials who have received such notification include the President's Intelligence Oversight Board, the Director of National Intelligence, NSA's Inspector General, and the Under Secretary of Defense for Intelligence. My office is also prepared to brief the Committee on these matters at the Committee's convenience.

(U) Should you have any questions, please contact Jonathan E. Miller, Associate Director of Legislative Affairs, at

VITO T. POTENZA General Counsel

Copy Furnished: Minority Staff Director, House Permanent Select Committee on Intelligence

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Memorandum of Understanding for S2I4 HMCs Guidelines Governing Access and Queries of Data Residing in Business Records FISA

I, _____, acknowledge that I understand the following guidelines regarding use of the Business Records FISA. If I encounter any situations that require clarification of additional guidance I will immediately contact the S2I4 Division Management or the Operations Chief.

Background: The Foreign Intelligence Surveillance Court (FISC) 2 March 2009 ruling concerning NSA use and access of BRFISA data in the pursuit of terrorist connections has resulted in heightened scrutiny of the analytic process. Individuals granted access to BRFISA data must, at present, be qualified to perform HMC functions and comply with the guidelines outlined below. All selectors labeled RAS approved have been subjected to a review and justification process through DOJ and the FISC. Only RAS selectors approved by the Court can be considered for chaining and analysis in

The following guidelines apply for access & use of BRF data in light of the FISC ruling:

- 1. Any selector used to query this database must be RAS-Approved based on justifications provided to the FISC after March 4 2009. The Emphatic Access Restriction (EAR) should prevent any HMC/Analyst from chaining a non-RAS approved selector in the mediately inform S2I4 management, Chief of Ops and Division TD is you note an event where the EAR appears to be inoperable. Document the event to the best of your ability.
- 2. Each HMC/analyst must take great care to ensure that the numbers entered into a query are accurate and reflect the actual number string in the SV provided spreadsheet as RAS approved by the court.
- 3. The HMC/analyst must immediately report any errors or anomalies made in the query process to S2I41 Branch and S2I4 Division Management.
- 4. While NSA is authorized to chain 3 hops out from a RAS approved selector, S2I4 HMCs and analysts will limit their chaining to 2 hops out until provided additional guidance.
- 5. Until a more formal process is established by ADET and SV4, S2I4 Operations Chief and/or Operations Coordinator will administer an oral competency evaluation to ensure guidelines and legal constraints with regards to RAS are understood before an individual is provided access to BR FISA data. SV will observe and record the date and results of that evaluation.
- 6. Technical solutions have been put in place to segregate data **Sector** around many, separate realms or repositories of metadata. Homeland analysts routinely have had access to four metadata repositories. They are SIGINT, BRFISA and PR/TT. Homeland analysts have had the ability to choose all

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metadata repositories or various combinations of the four. When performing contact chaining in **sector**, the analyst must be aware of the date ranges associated with each metadata realms. This knowledge is necessary to understand the potential source of the information being displayed in the

tool as the metadata from each realm is fused together at the display output in The knowledge of the date ranges for each realm is not identified to the user by the tool; the user needs to know this prior to using the tool. The date ranges for the four data realms are:

- SIGINT = late 1998 to present day
- 0
- BRFISA = 24 May 2006 to present day
- PR/TT = to present day

Effective March 18th, 2009, has cut off all access to the metadata realm and all accesses/permissions to this metadata realm has been revoked.

When an HMC opens **Construction**, turns on the 'FISABR' permission, sets the date range to "All" and performs a contact chain on a RAS-Approved seed selector. They will be provided metadata from the SIGINT realm between Mid-1998 to present and they will be provided metadata from the BRFISA realm between 24 May 2006 to present.

- 7. Each HMC/analyst must document their findings associated with queries on Court approved RAS approved selectors to indicate:
 - assessed value of contacts
 - data that prompts subsequent reporting or lead information for LE counterparts
 - additional lead data/seed information for the SIGINT system

The compilation of those findings will determine the breadth of additional queries.

Chief, S2I4/HSAC

Signature/Date

DERV FM: NSA/CSSM 1-52 DATED: 8 January 2007 DECL ON: 20320108

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NATIONAL SECURITY AGENCY

FORT GEORGE G. MEADE, MARYLAND 20755-6000

MEMORANDUM FOR STAFF DIRECTOR, HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U/FOUO) Congressional Notification – BR FISA End-to-end Review Status – INFORMATION MEMORANDUM

(TS//SI/NF) Consistent with my commitment to provide the earliest possible notification of potential issues, I wanted to give you a status report concerning our ongoing end-to-end review relative to the BR FISA matter. The Director of NSA, LTG Keith B. Alexander, ordered this review in February 2009 in light of the issues that had arisen concerning this matter.

(TS//SL/NF) The end-to-end review is wrapping up. This process has allowed us to identify and address several issues concerning access to and handling of the BR FISA data, in addition to those previously reported to the Court and the Committee. Each of these access and handling issues are under review to determine if the activities were consistent with the BR FISA order.

(U//FOUO) We are reviewing the report for legal and factual accuracy, including an assessment of whether the new issues present any substantive privacy concerns or are essentially procedural issues. The final report, including the conclusions and the facts on which they are based, will be provided to the Committees as soon as it is complete.

(U) Should you have any questions, please contact my Legislative Affairs Officer,

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LA FORREST V. WILLIAMS Deputy Associate Director Legislative Affairs Office

Copy Furnished: Minority Staff Director, House Permanent Select Committee on Intelligence

, at

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All redacted

information exempt

under (b)(3) except as otherwise noted.

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NATIONAL SECURITY AGENCY FORT GEORGE G. MEADE, MARYLAND 20755-6000 MAY 0 7 2009

MEMORANDUM FOR MINORITY STAFF DIRECTOR, HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

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the

LA FORREST V. WILLIAMS Deputy Associate Director Legislative Affairs Office

Copy Furnished: Staff Director, House Permanent Select Committee on Intelligence

at

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NATIONAL SECURITY AGENCY FORT GEORGE G. MEADE, MARYLAND 20755-6000 MAY 0 7 2009

MEMORANDUM FOR STAFF DIRECTOR, SENATE SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U/FOUO) Congressional Notification – BR FISA End-to-end Review Status – INFORMATION MEMORANDUM

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Should you have any questions, please contact my Legislative Affairs Officer,

LA FORREST V. WILLIAMS Deputy Associate Director Legislative Affairs Office

Copy Furnished: Minority Staff Director, Senate Select Committee on Intelligence

at

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NATIONAL SECURITY AGENCY FORT GEORGE G. MEADE, MARYLAND 20755-6000 MAY 0 7 2009

MEMORANDUM FOR MINORITY STAFF DIRECTOR, SENATE SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U/FOUO) Congressional Notification – BR FISA End-to-end Review Status – INFORMATION MEMORANDUM

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LA FORREST V. WILLIAMS Deputy Associate Director Legislative Affairs Office

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U.S. Department of Justice

National Security Division

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Washington, D.C. 20530

July 2, 2009

The Honorable Reggie B. Walton United States Foreign Intelligence Surveillance Court 333 Constitution Avenue, N.W. Washington, D.C. 20001

Re: Business Records FISA NSA Review Report dated June 25, 2009 (TS)-

Dear Judge Walton:

On June 30, 2009, The National Security Agency (NSA) transmitted the abovereferenced report to the Select Committee on Intelligence of the United States Senate, the Permanent Select Committee on Intelligence of the United States House of Representatives, the Committee on the Judiciary of the United States Senate, and the Committee on the Judiciary of the United States House of Representatives. Enclosed for the Court's information is a copy of that report. The report details the progress NSA has made thus far on the Business Records FISA end-to-end system engineering and process review. The government anticipates formally filing the enclosed report with the Court upon completion of the government's end-to-end system engineering and process review along with the additional materials/information the government was ordered by the Court to provide in paragraph 4 of its Order dated March 2, 2009 in docket number BR 08-13 and its Order dated June 22, 2009 in docket number BR 09-06. The government anticipates making its formal submission within the next sixty (60) days. (TS//SI//NF)

Sincerely,

Chief, Operations Section Office of Intelligence National Security Division U.S. Department of Justice

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Classified by: <u>David S. Kris, Assistant</u> <u>Attorney General, NSD, DOJ</u> Reason: <u>1.4(c)</u> Declassify on: <u>2 July 2034</u>



TOP SECRET//COMINT//NOFORN NATIONAL SECURITY AGENCY

FORT GEORGE G. MEADE, MARYLAND 20755-6000

All redacted information exempt under (b)(3) except as otherwise noted.

SEP 1 0 2009

MEMORANDUM FOR STAFF DIRECTOR, SENATE SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U) Congressional Notification – National Security Agency (NSA) Presentations on Business Records (BR) FISA for the Foreign Intelligence Surveillance Court (FISC), September 1, 2009 -INFORMATION MEMORANDUM

(U//FOUO) This is to notify the Committee of developments regarding the BR FISA program. The Committee has previously been informed of the results of our end-to-end review of this program and corrective actions taken. The Agency has recently provided a successful demonstration of the program to the Foreign Intelligence Surveillance Court (FISC). This is a report on that recent session.

(TS//SI//NF) On September 1, 2009, at the request of the FISC, NSA hosted Presiding Judge Bates and Judges Walton and Hogan for a series of briefings and demonstrations regarding the BR FISA program. The presentation included a briefing on BR FISA data flow; a demonstration of how analysts log on to NSA systems to access BR FISA data; a demonstration of technical safeguards that prevent queries based on seed numbers that do not meet the Reasonable Articulable Suspicion (RAS) standard; and a demonstration of analyst queries using RAS-approved telephone identifiers. The information was presented in the context of a current operation that concerns a potential threat to the U.S. homeland.

(TS//SI//NF) This was an opportunity to address concerns raised by Judge Bates in a letter on August 4th to the Attorney General, and more broadly to demonstrate NSA's dedication to compliance with the Court's Orders, including minimization procedures, and how NSA uses the BR FISA program in its counterterrorism missions while appropriately protecting U.S. person privacy. The judges were engaged throughout and asked questions, which were answered by the briefers and other subject matter experts. At the conclusion, the judges expressed their appreciation for the amount and quality of information presented to them.

(TS//SI//NF) On September 3rd, Judge Walton signed the Renewal Order for the BR FISA. The order, which will remain in effect through

> Derived From: NSA/CSSM 1-52 Dated: 20070108 Declassify On: 20340801 TOP SECRET//COMINT//NOFORN

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October 30, 2009, restores to NSA the authority to make RAS determinations as to whether specific telephone identifiers may be used as "seeds" for querying against the BR FISA metadata. We view the signing of the renewal order as an indication that NSA is regaining the Court's confidence in its ability to safeguard U.S. person privacy while using BR FISA data for vital national security missions.

(U) Should you have any questions, please contact of my staff at

ETHAN L. BAUMAN

ETHAN L. BAUMAN Associate Director Legislative Affairs Office

Copy Furnished: Minority Staff Director, Senate Select Committee on Intelligence

JOINT STATEMENT FOR THE RECORD BY

MICHAEL LEITER DIRECTOR NATIONAL COUNTERTERRORISM CENTER

AND

ASSOCIATE DEPUTY DIRECTOR FOR COUNTERTERRORISM

ASSOCIATE DEPUTY DIRECTOR FOR COUNTERTERRORISM SIGNALS INTELLIGENCE DIRECTORATE NATIONAL SECURITY AGENCY

BEFORE THE HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE CLOSED HEARING ON PATRIOT ACT REAUTHORIZATION OCTOBER 21, 2009

> Derived From: NSA/CSSM 1-52 Dated: 20070108 Declassify On: 20320108 TOP SECRET//COMINT//NOFORN

(U) Introduction

(U) Chairman Reyes, Ranking Member Hoekstra, distinguished members of the committee, thank you for the opportunity to discuss the importance of Section 215 of the USA Patriot Act of 2001 to our Nation's security.

(U) Value of Section 215 Authorities to National Security

(TS//SI//NF) As this Committee well knows, since the tragedy of 9/11, the Intelligence Community has developed an array of capabilities to detect, identify and disrupt terrorist plots against the United States and its interests. Detecting threats by exploiting terrorist communications has been, and continues to be, one of the critical tools in that fight. Above all else, it is imperative that we have a capability to rapidly identify any terrorist threats emanating from within the United States. As you will see in the Illustrations area below, the Section 215 Authorities played an important role in helping the Intelligence Community understand more fully the connections associated with now indicted Najibullah Zazi.

(TS//SI//NF) Members will recall that, prior to the attacks of 9/11, the NSA intercepted and transcribed seven calls from hijacker Khalid al-Mihdhar to a facility associated with an al Qa'ida safehouse in Yemen. However, NSA's access point overseas did not provide the technical data indicating where al-Mihdhar was calling from. Lacking the originating phone number, and hearing nothing in the content of those calls to suggest he was in the United States, NSA analysts concluded that al-Mihdhar was overseas. In fact, al-Mihdhar was calling from San Diego, California. According to the 9/11 Commission Report (pages 269-272):

"Investigations or interrogation of them [Khalid al-Mihdhar, etc], and investigation of their travel and financial activities could have yielded evidence of connections to other participants in the 9/11 plot. The simple fact of their detention could have derailed the plan. In any case, the opportunity did not arise. "¹

The Business Records FISA program, operated in accordance with FISA Court authorization pursuant to Section 215, is specifically developed to close the gap that allowed al-Mihdhar to be plotting undetected within the United States while communicating with a known SIGINT terrorism target overseas.

(S//SI//NF) Section 215 of the USA Patriot Act allows the FISA Court to authorize the Intelligence Community to collect the vital information that closes the critical seam between foreign threats and domestic entities. In particular, it allows the IC to detect:

• Phone numbers within the United States calling targeted phone numbers associated with suspected foreign terrorists abroad;

- Targeted phone numbers tied to suspected foreign terrorists abroad calling phone numbers in the United States; and
- Connections concerning communications between entities within the United States tied to a suspected foreign terrorist abroad

(S//SI//NF) In this context, the term "targeted number" refers to a number or other telephone identifier for which there exists Reasonable Articulable Suspicion (RAS) to believe the number is used by

(TS//SI//NF) The authority to collect information in bulk under Section 215 of the USA Patriot Act was first granted by the Foreign Intelligence Surveillance Court in May 2006 and has been renewed approximately every 90 days thereafter. The business records orders grant access to bulk telephony business records, or telephony metadata. "Telephony business records" or "telephony metadata" are simply technical terms that include the phone number that placed a call, the phone number at the receiving end of a call, when the phone call was placed, the duration of the call, and similar information about the call. Telephony business records do not include the content of any phone calls. In other words, the business records orders issued by the FISC do not authorize the collection of what is being said in any telephone calls.

(TS//SI//NF) NSA needs access to telephony business records in bulk¹ so that it can quickly identify the network of contacts that a targeted number is connected to, whenever a targeted number is detected. NSA identifies the network of contact by applying sophisticated analysis to this metadata. The more metadata NSA has access to, the higher the chances are that NSA can identify or discover the network of contacts linked to targeted numbers. Information discovered through its analysis of the bulk telephony business records is provided to the FBI, which is then responsible for further investigation of any potential terrorist threat.

(U) In sum, these authorities and capabilities are about rapidly identifying individuals like al-Mihdhar who might be operational in the United States today as well as their network of contacts. The IC requires the BR FISA program to close the seam between foreign intelligence knowledge of threats and persons who may be connected to those threats in the US.

Illustrations of Sec 215 authorities and NSA capabilities in action

(TS//SI//NF) The foregoing discussion is not hypothetical. As of October 1, 2009, NSA has provided 295 reports to the FBL_CIA and NCTC containing telephone numbers in contact with numbers associated

Upon

receipt of the reporting from NSA, the FBI sent investigative leads to relevant FBI Field

¹ (TS//SI//NF) The current Business Records Order authorizes NSA to collect the records for approximately

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Offices for investigative action. FBI representatives have indicated to NSA that the telephone contact reporting has provided leads and linkages to individuals in the United States with potential ties to terrorism who may not have otherwise been known to or identified by the FBI. In Calendar Year 2008, telephone numbers tipped from the NSA business records results either added value or led to:

- the opening of over 240 Threat Assessments
- the opening of over 100 Preliminary Investigations
- the opening of approximately 15 Full Investigations
- 180 National Security Letters issued.

(TS//SI//NF) NSA tips derived from the Agency's analysis of BR FISA telephony metadata have contributed directly to the following specific cases.

(TS//SI//NF) Investigation of Najibullah Zazi. Now indicted, the Intelligence Community assesses that Najibullah Zazi -- in consultation with or under the guidance of a Pakistan-based al Qa'ida associate -- was conspiring to use Improvised Explosive Devices in the United States. BR FISA metadata played an important role in helping the IC understand more fully the range of Zazi's connections.

(TS//SI//NF) On September 6, 2009, using authorities under the FISA Amendments Act (FAA), NSA intercepted a coded email discussion between an al Qa'ida-associated email account previously accessed in Pakistan and an unknown account. NSA analysts quickly determined that the unknown account might be located in the United States and conveyed this information to the FBI in order that the FBI could obtain FISA coverage of the suspected US-based account. Through the FBI-obtained FISA, it was determined that the user of the account and an associated telephone number was Najibullah Zazi. Further investigation revealed Zazi's presence in Colorado. The FBI passed Zazi's mobile telephone number to NSA on the evening of 9-10 September.

(TS//SI//NF) Shortly after receipt of Zazi's telephone number from FBI—and at approximately the same time that Zazi had obtained a one-way car rental from Colorado to New York City and had begun driving to New York—NSA issued a Business Records FISA metadata report on domestic and foreign contacts of that telephone. Among those contacts identified was a phone later confirmed as belonging to a key Zazi associate Adis Medunjanin. This was the FBI's first intelligence information about Medunjanin's telephone number and the contact corroborated other early information about Medunjanin's relationship with Zazi. It also magnified concerns about that relationship because, in that same report, NSA contextualized the Medunjanin phone as being in direct contact with three telephones (two domestic and one foreign) used by another extremist currently targeted in a priority FBI CT investigation. This detail, available only at the "second hop"² and only visible due to the blending of BR FISA and SIGINT data, quickly identified the Medunjanin number as a priority lead for the FBI. The detection

 $^{^{2}}$ (S//SL/NF) Second Hop: if the analysts submit a particular telephone number as a query, the database is designed to return any other telephone numbers that have called, or been called by, that number. This query process can be repeated for each of the returned numbers as well, generating information about communications two or three steps removed from the original number.

and alert of the Medunjanin connection was achieved through the agility of the BR FISA program. It provided timely, key information that was unavailable through any other sources and significantly accelerated and focused the investigation.



(TS//SI//NF) While these Business Records FISA successes are significant, the true value of the program to the nation is that it strengthens the Intelligence Community's early warning system for the detection of terrorists and discovery of plots. NSA monitors terrorist communications around the world on a broad scale. The nation requires a SIGINT system that will flash bright ever there is an indication of a threat to the US Homeland. There is no doubt that the United States. The Business Records FISA program is a strategic program for the nation, connecting the nation's counterterrorism capabilities.

(TS//SI//NF) The Business Records FISC Order

(TS//SI//NF) As provided in the BR FISA Order, NSA's access to and use of BR FISA metadata records is governed by established minimization procedures. As the Committee is aware by way of previous written notification, on January 9, 2009, in the course of a regular review and discussion with NSA, the Department of Justice (DoJ) with NSA assistance identified what was ultimately determined to be an incident of non-compliance with the Order. Subsequently on January 15, 2009, DoJ filed a preliminary notice of non-compliance with the FISC.

(U//FOUO) In response to the Government's compliance notice, on January 28, 2009, the Court directed the Government to file a brief and supporting documentation describing the non-compliance matter. The Government's response to the order was filed with the FISC on February 17, 2009. On February 25, 2009, written notification of the matter was provided to the Committee.

(TS//SI//NF) On March 2, 2009, the FISC issued an Order restricting NSA's access to the metadata for intelligence purposes except upon Court approval on a caseby-case basis, with an exigency provision allowing for access when immediate access was necessary to protect against an imminent threat to human life. The Court also directed the Government to make certain filings: a declaration by at least the FBI Director describing the value of the metadata to national security, the results of the NSA end-toend system engineering and process reviews, a statement concerning remedial efforts relating to matters of non-compliance and minimization and oversight procedures proposed in the event the Court were to determine to allow resumption of regular access to the BR metadata.

(U//FOUO) As the Committee has been made aware, these matters were given the utmost attention and addressed through changes in processes and implementation of FISC requirements during the ensuing months. In addition, and as further demonstration of NSA's commitment to a more robust compliance regime, NSA established a Director of Compliance with authority to develop, implement, and monitor a comprehensive compliance program that would complement and reinforce the intelligence oversight program carried out by the NSA/CSS Inspector General and the oversight responsibilities of the NSA/CSS General Counsel. This program is intended to integrate compliance strategies and activities across NSA/CSS's mission, technology and policy organizations; ensure a robust compliance training and education program; and maintain and report on a comprehensive status of mission compliance at NSA/CSS, including performing trend analysis and ensuring prompt corrective actions.

(TS//SI//NF) On September 3, 2009, after receiving extensive demonstrations and briefings regarding the BR FISA program, the FISC signed the Renewal Order for BR FISA. The order, which will remain in effect through October 30, 2009, restores to NSA the authority to make Reasonable Articulable Suspicion (RAS) determinations as to whether specific telephone identifiers may be used as "seeds" for querying against the BR FISA metadata. The signing of the renewal order is viewed as an indication that NSA is regaining the Court's confidence in its ability to safeguard US Person privacy while using BR FISA data for vital national security missions.

(TS//SI//NF) In conclusion, the BR FISA program provides a vital capability to the Intelligence Community. Recognizing that the program has implications for the privacy interests of US Person data, extensive policies, safeguards, and reviews have been enacted by the FISC, DOJ, DNI and NSA. 9/11 taught us that applying lead information from foreign intelligence in a comprehensive and systemic fashion is

required to protect the homeland. The Business Records FISA program operated under Section 215 of the USA Patriot act covers a critical seam in our defense against terrorism.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530 December 17, 2009

The Honorable Bobby Scott Committee on the Judiciary United States House of Representatives 1201 Longworth House Office Building Washington, DC 20515

Dear Congressman Scott:

(U) Thank you for your letter of October 5, 2009, requesting that the Department of Justice work to provide additional public information on the use of Section 215 of the USA PATRIOT Act.

(TS//SI//NF) Public discussion of the highly classified uses of Section 215 authority, including the bulk collection program conducted thereunder, is problematic because it would expose sensitive sources and methods involved in this critical intelligence collection activity. Because we are concerned that public disclosure would cause serious damage to national security, we cannot disclose publicly that Section 215 is used for bulk collection of telephony metadata. We do agree, however, that it is important that Members of Congress have access to information about this program, as well as a similar collection program conducted under the pen register/trap and trace authority of FISA, when considering reauthorization of the expiring USA PATRIOT Act provisions.

(TS//SI//NF) The Department has therefore worked with the Intelligence Community to prepare a document that describes these two collection programs, the authorities under which they operate, the restrictions imposed by the Foreign Intelligence Surveillance Court, the National Security Agency's record of compliance, and the importance of these programs to the national security of the United States. We believe that making this document available to all Members of Congress is an effective way to inform the

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Classified by: Assistant Attorney General, NSD Reason: - <u>1.4(c)</u> Declassify on: <u>11 December 2034</u>

legislative debate about reauthorization of Section 215 and any changes to the FISA pen register/trap and trace authority. We are working with both the House and Senate leadership and the Intelligence Committees to make this document available to all Members of Congress, as well as cleared leadership, intelligence and judiciary committee staffs, subject to strict rules designed to ensure that there is an understanding of the importance to national security of maintaining the secrecy of these programs.

(U) We look forward to continuing to work with you and your staff as the Congress continues its deliberations on reauthorizing the expiring provisions of the USA PATRIOT Act.

Sincerely,

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Ronald Weich Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530 December 17, 2009

The Honorable John Conyers, Jr. Chairman Committee on the Judiciary United States House of Representatives 2138 Rayburn House Office Building Washington, DC 20515

Dear Chairman Conyers:

(U) Thank you for your letter of October 5, 2009, requesting that the Department of Justice work to provide additional public information on the use of Section 215 of the USA PATRIOT Act.

(TS//SI//NF) Public discussion of the highly classified uses of Section 215 authority, including the bulk collection program conducted thereunder, is problematic because it would expose sensitive sources and methods involved in this critical intelligence collection activity. Because we are concerned that public disclosure would cause serious damage to national security, we cannot disclose publicly that Section 215 is used for bulk collection of telephony metadata. We do agree, however, that it is important that Members of Congress have access to information about this program, as well as a similar collection program conducted under the pen register/trap and trace authority of FISA, when considering reauthorization of the expiring USA PATRIOT Act provisions.

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(U) We look forward to continuing to work with you and your staff as the Congress continues its deliberations on reauthorizing the expiring provisions of the USA PATRIOT Act.

Sincerely,

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Ronald Weich Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530 December 17, 2009

The Honorable Jerrold Nadler Committee on the Judiciary United States House of Representatives 2334 Rayburn House Office Building Washington, DC 20515

Dear Congressman Nadler:

(U) Thank you for your letter of October 5, 2009, requesting that the Department of Justice work to provide additional public information on the use of Section 215 of the USA PATRIOT Act.

(TS//SI//NF) Public discussion of the highly classified uses of Section 215 authority, including the bulk collection program conducted thereunder, is problematic because it would expose sensitive sources and methods involved in this critical intelligence collection activity. Because we are concerned that public disclosure would cause serious damage to national security, we cannot disclose publicly that Section 215 is used for bulk collection of telephony metadata. We do agree, however, that it is important that Members of Congress have access to information about this program, as well as a similar collection program conducted under the pen register/trap and trace authority of FISA, when considering reauthorization of the expiring USA PATRIOT Act provisions.

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(U) We look forward to continuing to work with you and your staff as the Congress continues its deliberations on reauthorizing the expiring provisions of the USA PATRIOT Act.

Sincerely,

Ronald Weich Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

TOP SECRET//COMINT//HCS//G//NOFORN, ORCON_____ UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

August 16, 2010

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate Washington, D.C. 20510

The Honorable John Conyers, Jr. Chairman Committee on the Judiciary U.S. House of Representatives Washington, D.C. 20515

Dear Madam and Messrs. Chairmen:

The Honorable Dianne Feinstein Chairman Select Committee on Intelligence United States Senate Washington, D.C. 20510

The Honorable Silvestre Reyes Chairman Permanent Select Committee on Intelligence U.S. House of Representatives Washington, D.C. 20515

Pursuant to section 1871 of United States Code Title 50, we are providing the Committees with copies of the remaining decisions, orders, or opinions issued by the Foreign Intelligence Surveillance Court, and pleadings, applications, or memoranda of law associated therewith, that contain significant constructions or interpretations of any provision of FISA during the five-year period ending July 10, 2008. See 50 U.S.C. §1871(c)(2). We have provided previously similar materials for the same time period.

The enclosed documents are being produced in digital format on compact disks (CDs). The CDs and their contents are highly classified at the TOP SECRET//COMINT//HCS //G//NOFORN, ORCON level and are being provided for review by Members and appropriately cleared staff from the four Committees. They will be delivered in accordance with our usual practice regarding such materials. The documents contain redactions that the Attorney General, in consultation with the Director of National Intelligence, authorized in accordance with Section 1871(c)(2) as necessary to protect the national security of the United States. As required by that provision, these redactions are limited to the identities of targets and information concerning sensitive sources and methods.

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The Honorable Patrick J. Leahy The Honorable Dianne Feinstein The Honorable John Conyers, Jr. The Honorable Silvestre Reyes Page Two

Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

Mark Jugran for Ronald Weich Assistant Attorney General

Enclosures

The Honorable Jeff Sessions cc: **Ranking Minority Member** Senate Committee on the Judiciary

> The Honorable Christopher S. Bond Vice Chairman Senate Select Committee on Intelligence

The Honorable Lamar S. Smith Ranking Minority Member House Committee on the Judiciary

The Honorable Peter Hoekstra Ranking Minority Member House Permanent Select Committee on Intelligence

The Honorable John D. Bates **Presiding Judge** United States Foreign Intelligence Surveillance Court

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All redacted information exempt under (b)(1) and (b) (3) except as otherwise noted.

Evan:

(TS//SI//NF) During our telephone conversation of March 7, 2011, you asked several questions pertaining to geolocational information in mobility data. Specifically, you asked for details regarding NSA's mobility testing effort, when DOJ and the FISC were notified of this effort, and whether a legal memorandum of law on cell site locations was available. A response to your questions is provided below.

(TS//SI//NF) As pertains to the mobility testing effort, NSA tested data from the April 26, 2010 feed. On this day, NSA sampled roughly for the formation of a day's worth of data (a full day is for the four files that were used in the sampling contained the following number of records:

(TS//SI//NF) -Sample File 1:	records
(TS//SI//NF) Sample File 2:	records
(TS//SI//NF) Sample File 3:	records
(TS//SI//NF) Sample File 4:	records

(TS//SI//NF) The results of NSA's technical analysis remained with the provider's technical team. No agency outside of NSA has received these results. NSA continues to receive and analyze sample data.

(TS//SI//NF) In regards to the mobility testing effort, NSA consulted with DOJ before implementing this testing effort. Based upon our description of the proposed mobility data (cell site location information) testing plan, DOJ advised in February 2010 that obtaining the data for the described testing purposes was permissible based upon the current language of the Court's BR FISA order requiring the production of 'all call detail records.' It is our understanding that DOJ also orally advised the FISC, via its staff, that we had obtained a limited set of test data sampling of cellular mobility data (cell site location information) pursuant to the Court-authorized program and that we were exploring the possibility of acquiring such mobility data under the BR FISA program in the near future based upon the authority currently granted by the Court. Upon concurring with our proposed plan, DOJ requested that NSA keep them apprised of the status of the testing and any future productions of mobility data.

Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20360401

(TS//SI//NF) Finally, during our conversation, you asked about a legal memorandum about which I was unaware. I have since discovered that DOJ is drafting a memorandum of law on this topic. Accordingly, requests for information regarding or copies of this legal memoranda should be made directly to the Department of Justice through their Office of Legislative Affairs."

Respectfully,



Attorney Office of General Counsel (Intelligence Law)

TOP SECRET // COMINT // NOFORN



NATIONAL SECURITY AGENCY FORT GEORGE G. MEADE, MARYLAND 20755-6000 All redacted information exempt under (b)(1) and (b)(3) except as otherwise noted.

SEP 0 1 2011

MEMORANDUM FOR: STAFF DIRECTOR AND MINORITY STAFF DIRECTOR, HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT: (TS//SI//NF) Congressional Notification – NSA Acquisition and Use of Telephony Metadata from Cellular Network Call Detail Records – INFORMATION MEMORANDUM

(TS//SI//NF) This is to inform the Committee that, in addition to the telephony metadata the National Security Agency (NSA) has been acquiring since 2006 under its counterterrorism Business Records (BR) Foreign Intelligence Surveillance Act (FISA) program, NSA has begun to acquire and analyze telephony metadata derived from cellular network or "mobility" call detail records (CDRs) The cellular telephony metadata is being produced pursuant to an order issued by the Foreign Intelligence Surveillance Court (FISC) pursuant to Section 501 (50 U.S.C. § 1861) of FISA. As the Committee is aware, the orders issued by the FISC strictly control the circumstances under which NSA may access (query), use, and disseminate information obtained under this bulk collection program.

(TS//SI//NF) NSA analyzes this metadata to discover and develop the networks and associations of known and suspected terrorists. Until this change, NSA had been acquiring approximately CDRs per day for billed long distance telephone calls to or from landline telephones either (a) between the U.S. and abroad; or (b) wholly within the U.S., including local telephone calls.

(TS//SI//NF) Before initiating the acquisition of mobility data, NSA undertook extensive testing to ensure strict compliance with the terms of the FISC Orders. The Court's Orders are designed to protect the civil liberties and privacy interests of Americans. Following completion of the testing, on 29 August 2011, NSA began to receive approximately CDRs per day and enter these records into our BR FISA bulk metadata architecture.

> Derived From: NSA/CSSM 1-52 Dated: 20070108 Declassify On: 20320108

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(TS//SI//NF) NSA requested that the remove the cell location information before providing the CDRs to NSA. Consequently, NSA is not currently receiving this field as part of the data being acquired. is critical to the (TS//SI//NF) The collection and processing of success of NSA's BR FISA program. We will continue to keep you informed of our progress in this area. Should you have questions or want additional information, please contact me at

ETHAN L. BAUMAN

ETHAN L. BAUMAN Director, Legislative Affairs Office

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NATIONAL SECURITY AGENCY FORT GEORGE G. MEADE, MARYLAND 20755-6000

SEP 0 1 2011

MEMORANDUM FOR: STAFF DIRECTOR AND MINORITY STAFF DIRECTOR, SENATE COMMITTEE ON THE JUDICIARY

SUBJECT: (TS//SI//NF) Congressional Notification – NSA Acquisition and Use of Telephony Metadata from Cellular Network Call Detail Records – INFORMATION MEMORANDUM

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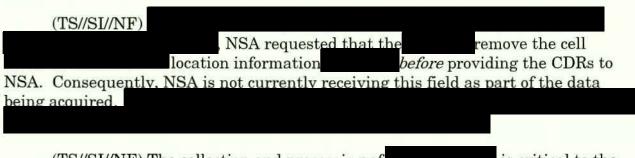
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> Derived From: NSA/CSSM 1-52 Dated: 20070108 Declassify On: 20320108 TOP SECRET//COMINT//NOFORN

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(TS//SL/NF) The collection and processing of sectors is critical to the success of NSA's BR FISA program. We will continue to keep you informed of our progress in this area. Should you have questions or want additional information, please contact me at

2+2,222 ETHAN L. BAUMAN

Director, Legislative Affairs Office

