UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

IN RE APPLICATION OF THE FEDERAL BUREAU OF INVESTIGATION FOR AN ORDER REQUIRING THE PRODUCTION OF TANGIBLE THINGS FROM [redacted]

Docket Number: BR 14-96

MEMORANDUM OPINION

The Court has today issued the Primary Order appended hereto granting the "Application of the Federal Bureau of Investigation for an Order Requiring the

Production of Tangible Things" ("Application" or "the instant Application"), which was submitted to the Court on June 19, 2014, by the Federal Bureau of Investigation ("FBI"). The Application requested the issuance of orders pursuant to 50 U.S.C. §1861, as amended (also known as Section 215 of the USA PATRIOT Act), requiring the ongoing daily production to the National Security Agency ("NSA") of certain telephone call detail records in bulk ("bulk telephony metadata").

On August 29, 2013, Judge Claire V. Eagan of this Court issued an Amended Memorandum Opinion in Docket Number BR 13-109, offering sound reasons for authorizing an application for orders requiring the production of bulk telephony metadata ("August 29 Opinion"). On September 17, 2013, following a declassification review by the Executive Branch, the Court published its redacted August 29 Opinion and the Primary Order issued in Docket Number BR 13-109. On October 11, 2013, Judge Mary A. McLaughlin of this Court granted the FBI's application to renew the authorities approved in Docket Number BR 13-109, issued a Memorandum adopting Judge Eagan's statutory and constitutional analyses, and provided additional analysis on whether the production of bulk telephony metadata violates the Fourth Amendment ("October 11 Opinion"). Both judges of this Court held that the compelled production of such records does not constitute a search under the Fourth Amendment. Judge

McLaughlin further found that the Supreme Court's decision in United v. Jones, __ U.S. __, 132 S. Ct. 945 (2012) neither mandates nor supports a different conclusion. Following a declassification review by the Executive Branch, the Court published the October 11 Opinion and the Primary Order issued in Docket Number BR 13-158 in redacted form a week later on October 18, 2013. Since the date of Judge McLaughlin's re-authorization of the bulk telephony metadata collection in Docket Number BR 13-158, the government has sought on three occasions renewed authority for this collection. The Court has approved those applications in Docket Numbers BR 14-01 (on January 3, 2014), BR 14-67 (on March 28, 2014), and the instant Application.

In approving the instant Application, I fully agree with and adopt the constitutional and statutory analyses contained in the August 29 Opinion and the October 11 Memorandum. In particular, with respect to the constitutional analysis, I concur with Judges Eagan and McLaughlin that under the controlling precedent of *Smith v. Maryland*, 442 U.S. 735 (1979), the production of call detail records in this matter does not constitute a search under the Fourth Amendment. With respect to the statutory requirements for the issuance of orders for the collection of bulk telephony metadata, I adopt the analysis put forth by Judge Eagan in her August 29 Opinion, and in particular, I note her discussion on the issue of relevance:

> The government must demonstrate "facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation." 50 U.S.C. 1861(b)(2)(A). The fact that international terrorist operatives are using telephone communications, and that it is necessary to obtain the bulk collection of a telephone company's metadata to determine those connections between known and unknown international terrorist operatives as part of authorized investigations, is sufficient to meet the low statutory hurdle set out in Section 215 to obtain a production of records. Furthermore, it is important to remember that the relevance finding is only one part of a whole protective statutory scheme. Within the whole of this particular statutory scheme, the low relevance standard is counter-balanced by significant post-production minimization procedures that must accompany such an authorization and an available mechanism for an adversarial challenge in this Court by the record holder. [. . .] Without the minimization procedures set out in detail in this Court's Primary Order, for example, no Orders for production would issue from this Court. See Primary Ord. at 4-17. Taken together, the Section 215 provisions are designed to permit the government wide latitude to seek the information it needs to meet its national security responsibilities, but only in combination with specific procedures for the protection of U.S. person information that are tailored to the production and with an opportunity for the authorization to be challenged. The Application before this Court fits comfortably within this statutory framework.

August 29 Opinion at 22-23.

Since the issuance of the August 29 Opinion and October 11 Memorandum, there have been changes to the minimization procedures applied to the bulk telephony metadata collection. These were requested by the government and approved by this Court. Moreover, the legality of the bulk telephony metadata collection has been challenged in litigation throughout the country and considered by four U.S. District

Court judges. Lastly, on December 18, 2013, in an order entered in BR 13-158, Judge McLaughlin granted leave to the Center for National Security Studies ("the Center") to file an *amicus curiae* brief on why 50 U.S.C. §1861 does not authorize the collection of telephony metadata records in bulk. The Center filed its *amicus* brief on April 3, 2014, after the most recent authorization of this collection in Docket Number BR 14-67. Prior to making a decision to grant the instant Application, I considered each of these developments, which I briefly note below.

Changes to Minimization Procedures

Pursuant to 50 U.S.C. §1861(g), the bulk telephony metadata collected pursuant to orders granting the instant Application, as well as all predecessor applications, are subject to minimizations procedures. The statutory requirements for minimization procedures under 50 U.S.C. §1861(g) are discussed in the August 29 Opinion. August 29 Opinion at 11. On February 5, 2014, the Court granted the government's Motion for Amendment to Primary Order in Docket Number BR 14-01, which amended the minimization procedures required by the Primary Order in that case in two significant respects. First, the amended procedures preclude the government (except in emergency circumstances) from querying the bulk telephony metadata without first having

obtained, by motion, a determination from this Court that reasonable, articulable suspicion (RAS) exists to believe that the selection term (e.g., a telephone number) to be used for querying is associated with an international terrorist organization named in the Primary Order requiring the production of the bulk telephony metadata.[1] Second, the amended procedures require that queries of the bulk telephony metadata be limited so as to identify only that metadata found within two "hops" of an approved selection term.[2] The government has requested, and the Court has approved, the same limitations in orders accompanying the two subsequent applications for this collection filed with this Court (i.e., Docket Number BR 14-67 and the instant Application).

On February 25, 2014, the government filed a Motion for Second Amendment to Primary Order in Docket Number BR 14-01, through which it sought further to modify the minimization procedures ("February 25 Motion"). Specifically, the government sought relief from the requirement that it destroy bulk telephony metadata after five

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[1] Previously, the minimization procedures allowed for this RAS determination to be made by one of a limited set of high-ranking NSA personnel.

[2] The first "hop" would include metadata associated with the set of numbers directly in contact with the approved selection term, and the second "hop" would include metadata associated with the set of numbers directly in contact with the first "hop" numbers. Previously, the minimization procedures allowed the government to query the bulk telephony metadata to identify metadata within three "hops" of an approved selection term.

years, based on the government's common law preservation obligations in pending civil litigation. In seeking relief from the five-year destruction requirement, the government proposed a number of additional restrictions on access to and use of the data, all designed to ensure that collected metadata that was more than five years old could only be used for the relevant civil litigation purposes. Although this Court initially denied the February 25 Motion without prejudice, the Court granted a second motion for the same relief on March 12, 2014 ("March 12 Order and Opinion"), that the government sought in order to comply with a preservation order that had been issued by the U.S. District Court for the Northern District of California after this Court's denial of the February 25 Motion. The March 12 Order and Opinion required that the bulk telephony metadata otherwise required to be destroyed under the five year limitation on retention be preserved and/or stored "[p]ending resolution of the preservation issues raised . . . before the United States District Court for the Northern District of California[."] March 12 Opinion and Order at 6. The March 12 Order and Opinion prohibited NSA intelligence analysts from accessing or using such data for any purpose; permitted NSA personnel to access the data only for the purpose of ensuring continued compliance with the government's preservation obligations; and prohibited any further accesses of BR metadata for civil litigation purposes without prior written notice to this Court. *Id.*

at 6-7. Finally, the March 12 Opinion and Order required the government promptly to notify this Court of any additional material developments in civil litigation pertaining to the BR metadata, including the resolution of the preservation issues in the proceedings in the Northern District of California. *Id.* at 7. The preservation issues raised in the Northern District of California have not yet been resolved. As a result, the government has requested and the Court has approved the same exemption from the five year limitation on retention, subject to the same restrictions on access and use, in Docket Number BR 14-67 and the instant Application.

Prior to deciding whether to re-authorize the bulk telephony metadata collection through the appended Primary Order, I considered with care the stated changes to the minimization procedures. As described, the first set of changes approved in the February 5 Order provide enhanced protections for the bulk telephony metadata. While the March 12 Opinion and Order allows the government to retain bulk telephony metadata beyond five years, it allows the government to do so for the sole purpose of meeting preservation obligations in civil litigation pending against it.

U.S. District Court Cases

In recent months, the legality of the bulk telephony metadata collection has been challenged on both statutory and constitutional grounds in proceedings throughout the country, and four U.S. District Court judges have issued opinions on these challenges. *Smith v. Obama,* No. 2:13-CV-257-BLW, 2014 WL 2506421 (D. Idaho June 3, 2014); *A.C.L.U. v. Clapper,* 959 F. Supp. 2d 724 (S.D.N.Y. 2013); *Klayman v. Obama,* 957 F. Supp. 2d 1 (D.D.C. 2013); and *U.S. v. Moalin,* No. 10cr4246 JM, 2013 WL 6079518 (S.D. Cal. November 18, 2013). In three of the four cases in which judges have issued opinions (i.e., all but the *Klayman* case), they have rejected plaintiffs' challenges to this collection. In particular, with respect to Fourth Amendment challenges raised by plaintiffs, the judges in *Smith, Clapper and Moalin* recognized that the Supreme Court's decision in *Smith v. Maryland* is controlling and does not support a finding that the bulk telephony metadata collection is a violation of the Fourth Amendment.

In *Klayman,* Judge Richard J. Leon of the U.S. District Court for the District of Columbia alone held that the plaintiffs were likely to succeed on their claim that the bulk telephony metadata collection was an unreasonable search under the Fourth Amendment. *Klayman,* 957 F. Supp. 2d at 41. Judge Leon ordered the government to

cease collection of any telephony metadata associated with [the plaintiffs'] personal Verizon accounts" and destroy any such metadata in its possession, but he stayed the order pending appeal. *Id.* at 43.

On January 22, 2014, a recipient of a production order in Docket Number BR 14-01 filed a Petition ("January 22 Petition") pursuant to 50 U.S.C. § 1861(f)(2)(A) and Rule 33 of the Foreign Intelligence Surveillance Court ("FISC") Rules of Procedure, asking this Court "to vacate, modify, or reaffirm" the production order issued to it.[3] According to the Petitioner, the Petition arose "entirely from the effect on [the recipient] of Judge Leon's Memorandum [Opinion]," and specifically, that Judge's conclusion that the Supreme Court's decision in *Smith v. Maryland* is "inapplicable to the specific activities mandated by the [Section] 1861 order at issue in the *Klayman* litigation." January 22 Petition at 3-4. Pursuant to the requirements of 50 U.S.C. § 1861(f), Judge Rosemary M. Collyer of this Court issued an Opinion and Order on March 20, 2014 ("March 20 Opinion and Order"), finding that the Petition provided no basis for vacating or

[3] Following a declassification review by the Executive Branch, the Court published the January 22 Petition filed in Docket Number BR 14-01 in redacted form on April 25, 2014.

modifying the relevant production order issued in Docket Number BR 14-01.[4] In her March 20 Opinion and Order, Judge Collyer engaged in an extensive analysis of Judge Leon's opinion in *Klayman*, ultimately disagreeing with his conclusion that *Smith v. Maryland* is inapplicable to the collection of bulk telephony metadata.

In issuing the Primary Order appended hereto which re-authorizes the bulk telephony metadata collection, I have carefully examined the noted U.S. District Court opinions, and I agree with Judge Collyer's analysis and opinion of the *Klayman* holding.

Amicus Curiae Brief

On April 3, 2014, the Center for National Security Studies filed an *amicus curiae* brief explaining why it believes that 50 U.S.C. §1861 does not authorize the collection of bulk telephony metadata. The *amicus* brief made a number of thoughtful points, the merits of which I have analyzed. Notwithstanding the Center's arguments, I find the authority requested by the FBI through the instant Application meets the requirements of the statute, and that the collection of bulk telephony metadata may be authorized under the terms of the statute.

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[4] Following a declassification review by the Executive Branch, the Court published the March 20 Opinion and Order issued in Docket Number BR 14-01 in redacted form on April 25, 2014.

Conclusion

The unauthorized disclosure of the bulk telephony metadata collection more than a year ago led to many written and oral expressions of opinions about the legality of collecting telephony metadata. Congress is well aware that this Court has interpreted the provisions of 50 U.S.C. § 1861 to permit this particular collection, and diverse views about the collection have been expressed by individual members of Congress. In recent months, Congress has contemplated a number of changes to the Foreign Intelligence Surveillance Act, a few of which would specifically prohibit this collection. Congress could enact statutory changes that would prohibit this collection going forward, but under the existing statutory framework, I find that the requested authority for the collection of bulk telephony metadata should be granted. Courts must follow the law as it stands until the Congress or the Supreme Court changes it.

In light of the public interest in this particular collection and the government's declassification of related materials, including substantial portions of Judge Eagan's August 29 Opinion, Judge McLaughlin's October 11 Memorandum, and Judge Collyer's March 20 Opinion and Order, I request pursuant to FISC Rule 62 that this Memorandum Opinion and Accompanying Primary Order also be published, and I

direct such request to the Presiding Judge as required by the Rule.

ENTERED this 19th day of June, 2014.

JAMES B. ZAGEL
Judge, United States Foreign
Intelligence Surveillance Court

[redacted]

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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

IN RE APPLICATION OF THE FEDERAL BUREAU OF INVESTIGATION FOR AN ORDER REQUIRING THE PRODUCTION OF TANGIBLE THINGS FROM [redacted]

Docket Number: BR 14-96

PRIMARY ORDER

A verified application having been made by the Deputy Director of the Federal Bureau of Investigation (FBI) for an order pursuant to the Foreign Intelligence Surveillance Act of 1978 (the Act), Title 50, United States Code (U.S.C.), § 1861, as

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Derived from: Pleadings in the above-captioned docket
Declassify on: ~~20 June 2039~~

amended, requiring the production to the National Security Agency (NSA) of the tangible things described below, and full consideration having been given to the matters set forth therein, the Court finds as follows:[1]

1. There are reasonable grounds to believe that the tangible things sought are relevant to authorized investigations (other than threat assessments) being conducted by the FBI under guidelines approved by the Attorney General under Executive Order 12333 to protect against international terrorism, which investigations are not being conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. [50 U.S.C. § 1861(c)(1)]

2. The tangible things sought could be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or

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[1] The Honorable Rosemary M. Collyer issued an Opinion and Order finding that, under *Smith v. Maryland*, 442 U.S. 735 (1979), this bulk production of non-content call detail records does not involve a search or seizure under the Fourth Amendment. *See* FISC docket no. BR 14-01, Opinion and Order issued on March 20, 2014 (under seal and pending consideration for unsealing, declassification, and release). This authorization relies on that analysis of the Fourth Amendment issue. In addition, the Court has carefully considered opinions issued by Judges Eagan and McLaughlin in docket numbers BR 13-109 and BR 13-158, respectively, as well as the decision in *Smith v. Obama*, No. 2:13-CV-257-BLW, 2014 WL 2506421 (D. Idaho June 3, 2014), *American Civil Liberties Union v. Clapper*, 959 F. Supp. 2d 724 (S.D.N.Y. Dec. 27, 2013), *Klayman v. Obama*, 957 F.Supp.2d 1 (D.D.C. 2013), *U.S. v. Moalin*, No. 10cr4246 JM, 2013 WL 6079518 (S.D. Cal. Nov. 18, 2013), and the Brief of Amicus Curiae for Center for National Security Studies on the Lack of Statutory Authority for this Court's Bulk Telephony Metadata Orders, Misc. 14-01 (FISC filed Apr. 3, 2014), *available at* http://www.fisc.uscourts.gov/sites/default/files/Misc%2014-01%20Brief-1.pdf.

tangible things. [50 U.S.C. § 1861(c)(2)(D)]

3. The application includes an enumeration of the minimization procedures the government proposes to follow with regard to the tangible things sought. Such procedures are similar to the minimization procedures approved and adopted as binding by the order of this Court in Docket Number BR 14-67 and its predecessors. [50 U.S.C. § 1861(c)(1)]

Accordingly, and as further explained in the accompanying Memorandum Opinion, the Court finds that the application of the United States to obtain the tangible things, as described below, satisfies the requirements of the Act 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)A. The Custodians of Records of [redacted] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata"[2] created by [redacted].

[2] For purposes of this Order "telephony metadata" includes comprehensive communications routing information, including but not limited to session identifying information (e.g., originating and terminating telephone number, International Mobile Subscriber Identity (IMSI)

B. The Custodian of Records of [redacted] shall produce to NSA upon service of the appropriate secondary order, and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by [redacted] for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls. [redacted]

(2) With respect to any information the FBI receives as a result of this Order (information that is disseminated to it by NSA), the FBI shall follow as minimization procedures the procedures set forth in *The Attorney General's Guidelines for Domestic FBI Operations* (September 29, 2008).

(3) With respect to the information that NSA receives or has received as a result of this Order or predecessor Orders of this Court requiring the production to NSA of

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number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer. Furthermore, this Order does not authorize the production of cell site location information (CSLI).

telephony metadata pursuant to 50 U.S.C. § 1861, NSA shall strictly adhere to the minimization procedures set out at subparagraphs A. through G. below; provided, however, that the Government may take such actions as are permitted by the Opinion and Order of this Court issued on March 12, 2014, in docket number BR 14-01, subject to the conditions and requirements stated therein, including the requirement to notify this Court promptly of any material developments in civil litigation pertaining to such telephony metadata.

A. The government is hereby prohibited from accessing business record metadata acquired pursuant to this Court's orders in the above-captioned docket and its predecessors ("BR metadata") for any purpose except as described herein.

B. NSA shall store and process the BR metadata in repositories within secure networks under NSA's control.[3] The BR metadata shall 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 this authority. NSA shall restrict access to the BR metadata to

[3] The Court understands that NSA will maintain the BR metadata in recovery back-up systems for mission assurance and continuity of operations purposes. NSA shall ensure that any access or use of the BR metadata in the event of any natural disaster, man-made emergency, attack, or other unforeseen event is in compliance with the Court's Order.

authorized personnel who have received appropriate and adequate training.[4] Appropriately trained and authorized technical personnel may access the BR metadata to perform those processes needed to make it usable for intelligence analysis. Technical personnel may query the BR metadata using selection terms[5] that have not been RAS-approved (described below) for those purposes described above, and may share the results of those queries with other authorized personnel responsible for these purposes, but the results of any such queries will not be used for intelligence analysis purposes. An authorized technician may access the BR metadata to ascertain those identifiers that may be high volume identifiers. The technician may share the results of any such access, *i.e.*, the identifiers and the fact that they are high volume identifiers, with

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[4] The Court understands that the technical personnel responsible for NSA's underlying corporate infrastructure and the transmission of the BR metadata from the specified persons to NSA, will not receive special training regarding the authority granted herein.

[5] [redacted]

authorized personnel (including those responsible for the identification and defeat of high volume and other unwanted BR metadata from any of NSA's various metadata repositories), but may not share any other information from the results of that access for intelligence analysis purposes. In addition, authorized technical personnel may access the BR metadata for purposes of obtaining foreign intelligence information pursuant to the requirements of subparagraph (3)C below.

C. The government may request, by motion and on a case-by-case basis, permission from the Court for NSA[6] to use specific selection terms that satisfy the reasonable articulable suspicion (RAS) standard[7] as "seeds" to query the BR metadata

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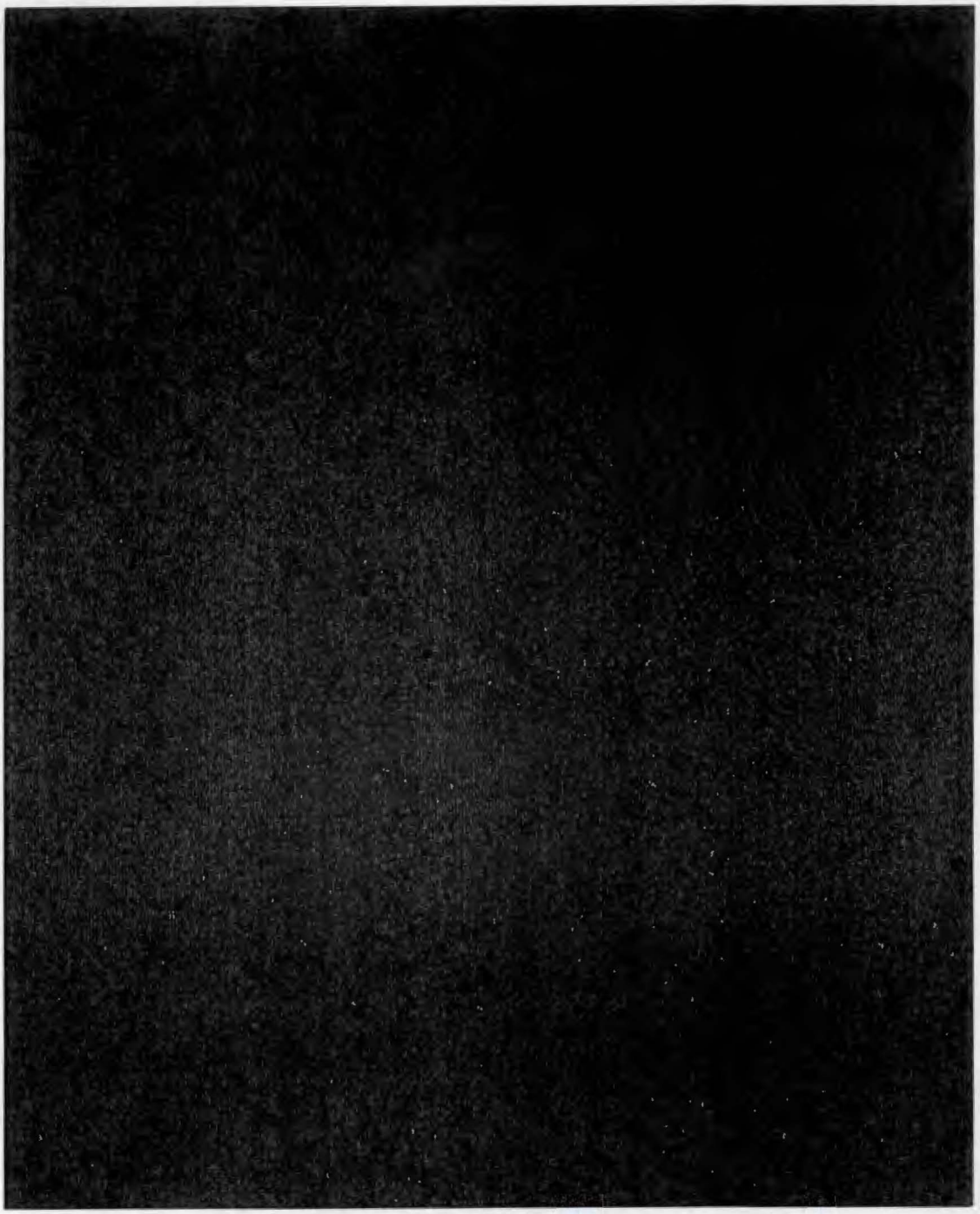
[6] For purposes of this Order, "National Security Agency" and "NSA personnel" are defined as any employees of the National Security Agency/Central Security Service ("NSA/CSS" or "NSA") and any other personnel engaged in Signals Intelligence (SIGINT) operations authorized pursuant to FISA if such operations are executed under the direction, authority, or control of the Director, NSA/Chief, CSS (DIRNSA). NSA personnel shall not disseminate BR metadata outside the NSA unless the dissemination is permitted by, and in accordance with, the requirements of this Order that are applicable to the NSA.

[7] The reasonable articulable suspicion standard is met when, 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 (RAS) that the selection term to be queried is associated with [redacted] provided, however, that any selection term reasonably believed to be used by a United States (U.S.) person shall not be regarded as associated with [redacted] solely on the basis of activities that are protected by the First Amendment to the Constitution. In the event the emergency provisions the Court's Primary Order are invoked by the Director or Acting Director, NSA's Office of General Counsel (OGC), in consultation with the Director or Acting Director will first confirm that any selection term reasonably believed to be used by a United States (U.S.) person is not regarded as associated with [redacted]

[redacted] solely on the basis of activities that are protected by the First Amendment to the Constitution.



to obtain contact chaining information, within two hops of an approved "seed", for purposes of obtaining foreign intelligence information. In addition, the Director or Acting Director of NSA may authorize the emergency querying of the BR metadata with a selection term for purposes of obtaining foreign intelligence information, within two hops of a "seed", if: (1) the Director or Acting Director of NSA reasonably determines that an emergency situation exists with respect to the conduct of such querying before an order authorizing such use of a selection term can with due diligence be obtained; and (2) the Director or Acting Director of NSA reasonably determines that the RAS standard has been met with respect to the selection term. In any case in which this emergency authority is exercised, the government shall make a motion in accordance with the Primary Order to the Court as soon as practicable, but

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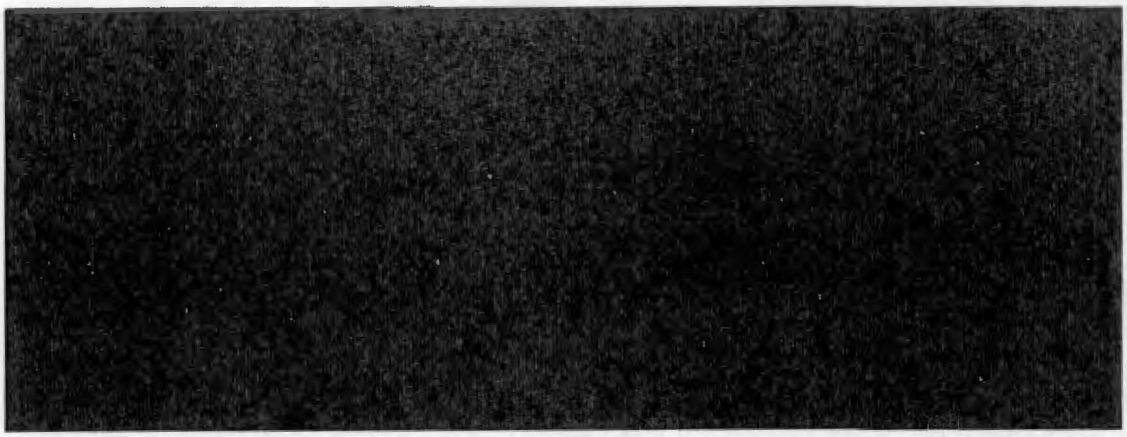

not later than 7 days after the Director or Acting Director of NSA authorizes such query.[8]

(i) Any submission to the Court under this paragraph shall, at a minimum, specify the selection term for which query authorization is sought or was granted, provide the factual basis for the NSA's belief that the reasonable articulable suspicion standard has been met with regard to that selection term and, if such query has already taken place, a statement of the emergency necessitating such query. [9]

(ii) NSA shall ensure, through adequate and appropriate technical and management controls, that queries of the BR metadata for intelligence analysis purposes will be initiated using only a selection term that has been RAS-approved.[10] Whenever

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[8] In the event the Court denies such motion, the government shall take appropriate remedial steps, including any steps the Court may direct.

[9] For any selection term that is subject to ongoing Court- authorized electronic surveillance, pursuant to 50 U.S.C. § 1805, based on this Court's finding of probable cause to believe that the selection term is being used or is about to be used by agents of [redacted] including those used by U.S. persons, the government may use such selection terms as "seeds" during any period of ongoing Court-authorized electronic surveillance without first seeking authorization from this Court as described herein. Except in the case of an emergency, NSA shall first notify the Department of Justice, National Security Division of its proposed use as a seed any selection term subject to ongoing Court-authorized electronic surveillance.

[10] NSA has implemented technical controls, which preclude any query for intelligence analysis purposes with a non-RAS-approved seed.

the BR metadata is accessed for foreign intelligence analysis purposes or using foreign intelligence analysis query tools, an auditable record of the activity shall be generated.[11]

(iii) The Court's finding that a selection term is associated with [redacted] shall be effective for: one hundred eighty days for any selection term reasonably believed to be used by a U.S. person; and one year for all other selection terms.[12,13]

(iv) Queries of the BR metadata using RAS-approved selection terms for purposes of obtaining foreign intelligence information may occur by manual analyst

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[11] This auditable record requirement shall not apply to accesses of the results of RAS-approved queries.

[12] The Court understands that from time to time the information available to NSA will indicate that a selection term is or was associated with a Foreign Power only for a specific and limited time frame. In such cases, the government's submission shall specify the time frame for which the selection term is or was associated with [redacted] In the event that the RAS standard is met, analysts conducting manual queries using that selection term shall properly minimize information that may be returned within query results that fall outside of that timeframe.

[13] The Court understands that NSA receives certain call detail records pursuant to other authority, in addition to the call detail records produced in response to this Court's Orders. NSA shall store, handle, and disseminate call detail records produced in response to this Court's Orders pursuant to this Order, [redacted]

query only. Queries of the BR metadata to obtain foreign intelligence information shall return only that metadata within two "hops" of an approved seed.[14]

D. Results of any intelligence analysis queries of the BR metadata may be shared, prior to minimization, for intelligence analysis purposes among NSA analysts, subject to the requirement that all NSA personnel who receive query results in any form first receive appropriate and adequate training and guidance regarding the procedures and restrictions for the handling and dissemination of such information.[15] NSA shall apply the minimization and dissemination requirements and procedures of Section 7 of United States Signals Intelligence Directive SP0018 (USSID 18) issued on January 25, 2011, to any results from queries of the BR metadata, in any form, before the information is disseminated outside of NSA in any form. Additionally, prior to disseminating any U.S. person information outside NSA, the Director of NSA, the Deputy Director of NSA, or one of the officials listed in Section 7.3(c) of USSID 18 (i.e., 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 Operations Officer of the National Security Operations Center)

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[14] The first "hop" from a seed returns results including all identifiers (and their associated metadata) with a contact and/or connection with the seed. The second "hop" returns results that include all identifiers (and their associated metadata) with a contact and/or connection with an identifier revealed by the first "hop."

[15] In addition, the Court understands that NSA may apply the full range of SIGINT analytic tradecraft to the results of intelligence analysis queries of the collected BR metadata.

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.[16] Notwithstanding the above requirements, NSA may share results from intelligence analysis queries of the BR 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. Notwithstanding the above requirements, NSA may share the results from intelligence analysis queries of the BR metadata, including United States person information, with Legislative Branch personnel to facilitate lawful oversight functions.

E. BR metadata shall be destroyed no later than five years (60 months) after its initial collection.

F. NSA and the National Security Division of the Department of Justice (NSD/DoJ) shall conduct oversight of NSA's activities under this authority as outlined below.

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[16] In the event the government encounters circumstances that it believes necessitate the alteration of these dissemination procedures, it may obtain prospectively-applicable modifications to the procedures upon a determination by the Court that such modifications are appropriate under the circumstances and in light of the size and nature of this bulk collection.

(i) NSA's OGC and Office of the Director of Compliance (ODOC) shall ensure that personnel with access to the BR metadata receive appropriate and adequate training and guidance regarding the procedures and restrictions for collection, storage, analysis, dissemination, and retention of the BR metadata and the results of queries of the BR metadata. NSA's OGC and ODOC shall further ensure that all NSA personnel who receive query results in any form first receive appropriate and adequate training and guidance regarding the procedures and restrictions for the handling and dissemination of such information. NSA shall maintain records of all such training.[17] OGC shall 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 shall 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 shall consult with NSD/DoJ on all significant legal opinions that relate to the interpretation, scope, and/or implementation of this

[17] The nature of the training that is appropriate and adequate for a particular person will depend on the person's responsibilities and the circumstances of his access to the BR metadata or the results from any queries of the metadata.

authority. When operationally practicable, such consultation shall occur in advance; otherwise NSD shall 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 shall meet for the purpose of assessing compliance with this Court's orders. Included in this meeting will be a review of NSA's monitoring and assessment to ensure that only approved metadata is being acquired. 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 authority requested herein.

(v) At least once during the authorization period, NSD/DoJ shall 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) Prior to implementation of any automated query processes, such processes shall be reviewed and approved by NSA's OGC, NSD/DoJ, and the Court.

G. Approximately every thirty days, NSA shall file with the Court a report that includes a statement of the number of instances since the preceding report in which NSA has shared, in any form, results from queries of the BR metadata that contain United States person information, in any form, with anyone outside NSA, other than

Executive Branch or Legislative Branch personnel receiving such results for their purposes that are exempted from the dissemination requirements of paragraph (3)D above. For each such instance in which United States person information has been shared, the report shall include NSA's attestation that one of the officials authorized to approve such disseminations determined, prior to dissemination, that the information was related to counterterrorism information and necessary to understand counterterrorism information or to assess its importance. In addition, should the United States seek renewal of the requested authority, NSA shall also include in its report a description of any significant changes proposed in the way in which the call detail records would be received from the Providers and any significant changes to the controls NSA has in place to receive, store, process, and disseminate the BR metadata.

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This authorization regarding [redacted] expires on the 12th day of September, 2014, at 5:00 p.m., Eastern Time.

Signed 19 June 2014 16:35 Eastern Time
Date Time

JAMES B. ZAGEL
Judge, United States Foreign
Intelligence Surveillance Court

[redacted]