

Paul Dietrich (@paulmd199)

September 22, 2015

Comparing two versions of the OIG report on STELLARWIND.

Recently the *New York Times* was able to FOIA additional portions of the Inspector General's report on STELLARWIND, in the process revealing additional evidence regarding the program's questionable legality, more information regarding what type of information was collected, and the standards for so doing.

In addition to what is in the [article](#), here are some items to note:

- (Pg 21) The “probable cause” standard demanded by the 1st amendment becomes “based on the factual and practical considerations of every day life on which reasonable and prudent persons act, there are reasonable grounds to believe...” This is not simply a flowery rewording, it is weakening of the standards of evidence.
- (Pg 54 & 480) That the President's authority “displaces provisions of law.” Literally a revival of the discredited Nixonian “If the President does it, it's not illegal.”

These have been noted before, but it is worth pointing them out again.

Still remaining: the names of the people affected by this program. There are literally people who have gone to jail based on evidence that neither they nor their attorneys ever saw. Pages 76 thru 78 covers some of that, as do pages 186-189 and 648 thru 661. Starting at 670 we have a discussion regarding discovery of evidence, and how STELLARWIND falls short. “We found that the department made little effort to understand and comply with its discovery obligations in connection with Stellar Wind-derived information.” (pg 693). Moreover, in a newly released segment on page 739, we see that as of the time the report was written that “... the Department of Justice continues to lack a comprehensive process for identifying potentially discoverable Stellar Wind information in terrorism cases.” Have the defense attorneys been notified in each of the criminal cases enumerated in the report? That remains unclear, hidden in the blackouts.

Likewise we continue to be denied key terms, for instance, “tippers” is used many times throughout the report, yet the definition of this word in the glossary is redacted. And yet we have a fair definition from duly FOIA'd [documents](#) hosted on NSA's own website. We are denied enumeration, by which I mean that most references to numbers are redacted, (How many reports, how much interception, how many emails, phone calls? How many terrorists nabbed?) as are many graphs. We are also frequently denied dates, from which to put together an accurate timeline.

I also note that many of the remaining redactions do not have a specific FOIA exemption listed. One can only take from this that there is no security reason to continue to deny this information.

In cases, what is redacted is already known from multiple public sources, and there is no good reason to hide them. The *Times* and others, therefore should continue to press for the release of additional information.

I have provided here a table enumerating the changes between the two versions.

The SID is divided into three major components, two of which – Analysis and Production **S2** and Data Acquisition **S3** – are relevant to the Stellar Wind program. The work of these components with respect to the Stellar Wind program is discussed in more detail in Section II below.
(S//NF)

Organizational designations anyone can look up. Source:
[Electrospaces.net](#)

<p>April 24</p> <p>https://fveydocs.org/document/report-ppsp/</p>	<p>September 20</p> <p>https://fveydocs.org/document/report-ppsp-i-2015-09-20/</p>
<p>(U) SIGINT Activities Authorized Under the Program P. 18</p> <p>(TS//STLW//SI//OC/NF) The 4 October 2001 Presidential Authorization directed the Secretary of Defense to [REDACTED]</p>	<p>(U) SIGINT Activities Authorized Under the Program P. 17</p> <p>(TS//STLW//SI//OC/NF) The 4 October 2001 Presidential Authorization directed the Secretary of Defense to "use the capabilities of the Department of Defense, including but not limited to the signals intelligence capabilities of the National Security Agency, to collect foreign intelligence by electronic surveillance," provided the surveillance was intended to:</p>
<p>P. 19</p> <p>[REDACTED]</p>	<p>P. 18</p> <p>(a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which there is probable cause to believe that ^{(b)(1), (b)(3)} [REDACTED] a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or an agent of such a group; or</p> <p>(b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States or (ii) no party to such communication is known to be a citizen of the United States.</p>
<p>P. 19</p> <p>[REDACTED]</p>	<p>P. 18</p> <p>(TS//NF) Although the authorization "was not limited to the signals intelligence capabilities of the National Security Agency," DoD's operational involvement in the PSP was limited to activities undertaken by NSA.</p>
<p>(S//NF) Each of the Presidential Authorizations included a finding to the effect that terrorist groups of global reach possessed the intent and capability to attack the United States, that an extraordinary emergency continued to exist, and that these circumstances constituted an urgent and compelling governmental interest permitting electronic surveillance within the United States for counterterrorism purposes, without judicial warrants or court orders. The primary authorities cited for the legality of the electronic surveillance and related activities were Article II of the Constitution and the 18 September 2001 Authorization for Use of Military Force Joint Resolution (AUMF).</p> <p>P. 20</p> <p>[REDACTED]</p> <p>The President also noted his intention to inform appropriate members of the Senate and the House of Representatives of the program "as soon as I judge that it can be done consistently with national defense needs."</p>	<p>and Department of Justice Certification as to Form and Legality P. 19</p> <p>(S//NF) Each of the Presidential Authorizations included a finding to the effect that terrorist groups of global reach possessed the intent and capability to attack the United States, that an extraordinary emergency continued to exist, and that these circumstances constituted an urgent and compelling governmental interest permitting electronic surveillance within the United States for counterterrorism purposes, without judicial warrants or court orders. The primary authorities cited for the legality of the electronic surveillance and related activities were Article II of the Constitution and the 18 September 2001 Authorization for Use of Military Force Joint Resolution (AUMF). The authorizations further provided that any limitation in E.O. 12333 or any other Presidential directive inconsistent with the Presidential Authorizations shall not apply, to the extent of the inconsistency, to the electronic surveillance authorized under the PSP. Each authorization also included the President's determination that, to assist in preserving the secrecy necessary to "detect and prevent acts of terrorism against the United States," the Secretary of Defense was to defer notification of the authorizations and the activities carried out pursuant to them to persons outside the Executive Branch. The President also noted his intention to inform appropriate members of the Senate and the House of Representatives of the program "as soon as I judge that it can be done consistently with national defense needs."</p>
<p>(U) Early Revisions to the Presidential Authorizations</p> <p>(TS//STLW//SI//OC/NF) On 2 November 2001, with the first authorization set to expire, President Bush signed a second Presidential Authorization of the PSP. The second authorization cited the same authorities in support of the President's actions, principally the Article II Commander-in-Chief powers and the AUMF. The second authorization also cited the same findings of a threat assessment concerning the magnitude of potential terrorist threats and the likelihood of their occurrence in the future. [REDACTED]</p> <p>P. 22</p> <p>[REDACTED]</p>	<p>(U) Early Revisions to the Presidential Authorizations P. 21</p> <p>(TS//STLW//SI//OC/NF) On 2 November 2001, with the first authorization set to expire, President Bush signed a second Presidential Authorization of the PSP. The second authorization cited the same authorities in support of the President's actions, principally the Article II Commander-in-Chief powers and the AUMF. The second authorization also cited the same findings of a threat assessment concerning the magnitude of potential terrorist threats and the likelihood of their occurrence in the future. However, the scope of authorized content collection and metadata acquisition was redefined in the second Presidential Authorization.</p> <p>(TS//STLW//SI//OC/NF) The language of the second Presidential Authorization changed in three respects the scope of collection and acquisition authorized under the PSP. First, the "probable cause to believe" standard for the collection of Internet communications and telephone content was replaced with "based on the factual and</p>

P. 23

(TS//STLW//SI//OC/NF) On 30 November 2001, the President signed a third authorization for the PSP.

(U) DoJ Office of Legal Counsel Memorandums

P. 22

practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe. . . ." DoJ, Counsel for Intelligence Policy, James A. Baker told us this change was made by Addington because he believed the terms "probable cause" were "too freighted" with usage in judicial opinions. Baker also said he believed the change to more colloquial language was made because the standard was to be applied by non-lawyers at the NSA. Second, the newly defined standard was to be applied to the belief that the communication "originated or terminated outside the United States . . ." The new language therefore eliminated the authority that existed in the first authorization to intercept the content of purely domestic communications.

(TS//STLW//SI//OC/NF) The third change in the scope of PSP collection and acquisition contained in the second Presidential Authorization was the inclusion of an additional (third) category of Internet and telephony metadata that could be acquired:

(ii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor.

This language represented an expansion of collection authority to include metadata pertaining to certain communications even when both parties were U.S. persons, as long as there were facts giving reason to believe that the communication was related to international terrorism.

(TS//STLW//SI//OC/NF) On 30 November 2001, the President signed a third authorization for the PSP. The third authorization was virtually identical to the second (2 November 2001) authorization.

(TS//STLW//SI//OC/NF) The language in the Presidential Authorization of 9 January 2002 concerning scope of authorized collection and acquisition became the standard for subsequent Presidential Authorizations until the disputed authorization in March 2004, which is discussed later in this report.

(U) DoJ Office of Legal Counsel Memorandums

(S//NF) White House Counsel Certifies Presidential Authorization Without Department of Justice Concurrence

P. 55

(TS//STLW//SI//OC/NF) On the morning of 11 March 2004, with the Presidential Authorization set to expire, President Bush signed a new authorization for the PSP. In a departure from the past practice of having the Attorney General certify the authorization as to form and legality, the 11 March authorization was certified by White House Counsel Gonzales. The 11 March authorization also differed markedly from prior authorizations in three other respects.

(TS//STLW//SI//OC/NF) The first significant difference between the 11 March 2004 Presidential Authorization and prior authorizations was the President's explicit assertion that the exercise of his Article II Commander-in-Chief authority

(TS//STLW//SI//OC/NF) Second,

(S//NF) White House Counsel Certifies Presidential Authorization Without Department of Justice Concurrence

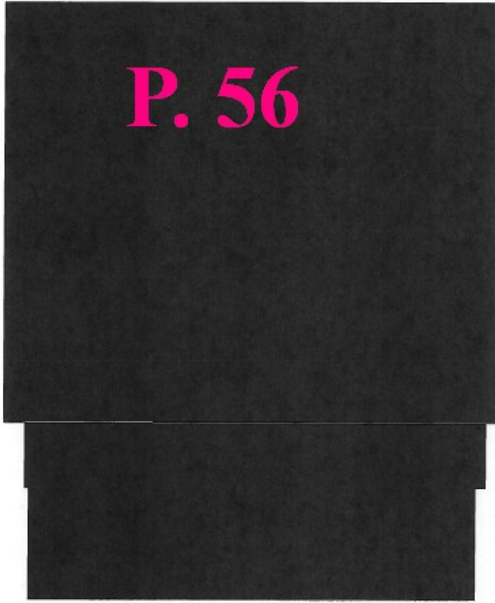
P. 54

(TS//STLW//SI//OC/NF) On the morning of 11 March 2004, with the Presidential Authorization set to expire, President Bush signed a new authorization for the PSP. In a departure from the past practice of having the Attorney General certify the authorization as to form and legality, the 11 March authorization was certified by White House Counsel Gonzales. The 11 March authorization also differed markedly from prior authorizations in three other respects.

(TS//STLW//SI//OC/NF) The first significant difference between the 11 March 2004 Presidential Authorization and prior authorizations was the President's explicit assertion that the exercise of his Article II Commander-in-Chief authority "displace[s] the provisions of law, including the Foreign Intelligence Surveillance Act and chapter 119 of Title 18 of the United States Code (including 18 U.S.C. §2511(f) relating to exclusive means), to the extent of any conflict between the provisions and such exercises under Article II." Subsequent Presidential Authorizations did not include this particular language.

(TS//STLW//SI//OC/NF) Second, to narrow the gap between the authority given on the face of prior authorizations and the actual operation of the program by the NSA, the terms governing the collection of telephony and Internet metadata were clarified. The underlying language for "acquiring" both telephony and Internet metadata remained as it had been, giving the NSA authority to "acquire" the metadata:

P. 56



P. 57

(TS//SI//NF) The third departure from prior authorizations was the inclusion of a statement that [redacted] (Id. at para. 10.)⁴

P. 55

when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor. [Presidential Authorization, 11 March 2004, para. 4(b).]

However, this language was now qualified by the following two subparagraphs:

(i) the Department of Defense may obtain and retain header/router/addressing-type information, including telecommunications dialing-type data, (b)(1), (b)(3) [redacted] provided that search and retrieval from such obtained header/router/addressing-type information, including telecommunications dialing-type data, shall occur only in accordance with this authorization; and

(ii) header/router/addressing-type information, including telecommunications dialing-type data, is "acquired" for purposes of subparagraph 4(b) above when, and only when, the Department of Defense has searched for and retrieved such header/router/addressing-type information, including telecommunications dialing-type data (and not when the Department obtains such header/router/addressing-type information, including telecommunications dialing-type data, such as (b)(1), (b)(3) [redacted] for retention). [Id. at para. 4(b)(i) & (ii).]

(TS//SI//NF//OC/NF) The 11 March 2004 authorization for the first time sought to make clear that the NSA could "obtain and retain" telephony and Internet metadata in bulk (b)(1), (b)(3) [redacted] but the metadata collected could only be queried ("acquired") in accordance with any of the three conditions set forth in paragraph 4(b). The language clarifying what the term "acquire" meant was included in every successive Presidential Authorization for the remainder of the program. (b)(1), (b)(3), (b)(7), (b)(9) [redacted]

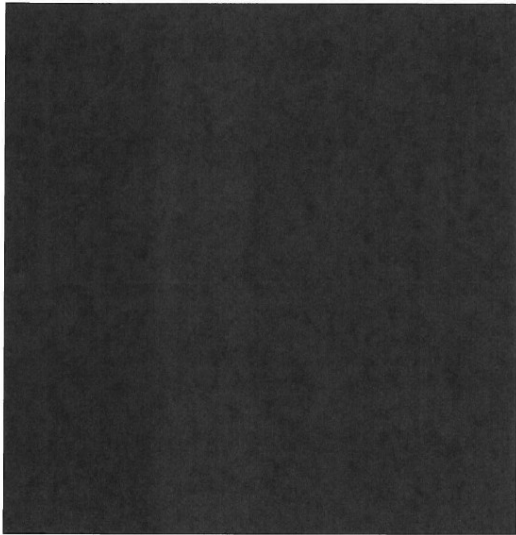
P. 56

(TS//SI//NF) The third departure from prior authorizations was the inclusion of a statement that "the Attorney General of the United States approved as to form and legality [all prior Presidential Authorizations] authorizing the same activities as are extended by this authorization." (Id. at para. 10.)¹⁴

P. 126

Exhibit B

(U) Threat Assessment Memorandum Concluding Paragraph
[Excerpt from the *Global War Against Terrorism* memorandum dated 10 January 2005.]



~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

~~TOP SECRET//STLW//HCS//COMINT//ORCON//NOFORN~~

P. 125

Exhibit B

(U) Threat Assessment Memorandum Concluding Paragraph
[Excerpt from the *Global War Against Terrorism* memorandum dated 10 January 2005.]

(TS//STLW//SI//OC/NF) Based on the information available to me from all sources, including the information in this document, it is my estimate that those involved in global terrorism possess both the capability and the intention to undertake further terrorist attacks within the United States, that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the United States Government. Accordingly, I recommend that, in accordance with the Constitution, you authorize the Secretary of Defense, for the purpose of detection and prevention of terrorist acts within the United States, to employ within the United States the capabilities of the Department of Defense, including but not limited to the signals intelligence capabilities of the National Security Agency, to collect foreign intelligence by electronic surveillance, if such electronic surveillance is intended to:

(a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe such communication originated or terminated outside the United States and a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group, provided that such group is al Qaeda, is a group affiliated with al Qaeda, or is another group that you determine for this purpose is in armed conflict with the United States and poses a threat of hostile action within the United States;

(b) acquire, with respect to a telephony communication, telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor; or

(c) collect, with respect to a non-telephony communication, header/ router/ addressing-type information, but not the contents of the communication, when, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group, provided that such group is al Qaeda, is a group affiliated with al Qaeda, or is another group that you determine for this purpose is in armed conflict with the United States and poses a threat of hostile action within the United States.

NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE

Further dissemination of this report outside the addressee organization is prohibited without the approval of the Inspector General.

P. 132



NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



P. 131



(U) HIGHLIGHTS

- (U) PSP establishment, implementation, and product

P. 137

(TS//STLW//SI//OC/NF) NSA began PSP operations on 6 October 2001. Although the Director of NSA was "comfortable" exercising the new authority and believed that it was lawful, he realized that it would be controversial. Under the PSP, NSA issued over [redacted] reports. This included [redacted] reports based on collected metadata, which was defined in the Authorization as [redacted].

[redacted] included [redacted] reports [redacted]. It also [redacted].

(TS//STLW//SI//OC/NF) NSA's PSP products, all of which were sent to CIA and FBI, were intended for intelligence purposes to develop investigative leads and were not to be used for judicial purposes. [redacted]

~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

ii

(U) HIGHLIGHTS

- (U) PSP establishment, implementation, and product

P. 136

(TS//STLW//SI//OC/NF) NSA began PSP operations on 6 October 2001. Although the Director of NSA was "comfortable" exercising the new authority and believed that it was lawful, he realized that it would be controversial. Under the PSP, NSA issued over [redacted] reports. This included [redacted] reports based on collected metadata, which was defined in the Authorization as "header/ router/ addressing-type information including telecommunications dialing-type data, but not the contents of the communication." It also included [redacted] reports based on domestic content collection, which includes words spoken in a telephone conversation or sent in an e-mail [redacted].

(TS//STLW//SI//OC/NF) NSA's PSP products, all of which were sent to CIA and FBI, were intended for intelligence purposes to develop investigative leads and were not to be used for judicial purposes. [redacted]

~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

ii

P. 153

(TS//SI//NF) Metadata, as defined by the Authorization, is [redacted].

(U) See Appendix B for information about the types of collection permitted.

~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

12

P. 152

(TS//SI//NF) Metadata, as defined by the Authorization, is "header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication."

(U) See Appendix B for information about the types of collection permitted.

~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

12

~~(TS//SI//NF)~~ Minimization Procedures and Additional Controls on PSP Operations¹²

P.
167

~~(TS//STLW//SI//OC/NF)~~ Management emphasized that the minimization rules required under non-PSP authorities also applied to PSP. The Authorization specifically directed NSA [REDACTED]

¹²(U) Internal control, or management control, comprises the plans, methods, and procedures used to meet missions, goals, and objectives. It provides reasonable assurance that an entity is effective and efficient in its operations, reliable in its reporting, and compliant with applicable laws and regulations.

~~(TS//SI//NF)~~ Minimization Procedures and Additional Controls on PSP Operations¹²

P.
166

~~(TS//STLW//SI//OC/NF)~~ Management emphasized that the minimization rules required under non-PSP authorities also applied to PSP. The Authorization specifically directed NSA to "minimize the information collected concerning American citizens, to the extent consistent with the effective

¹²(U) Internal control, or management control, comprises the plans, methods, and procedures used to meet missions, goals, and objectives. It provides reasonable assurance that an entity is effective and efficient in its operations, reliable in its reporting, and compliant with applicable laws and regulations.

~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~

~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~
~~TOP SECRET//STLW//COMINT//ORCON/NOFORN~~ ST-09-0002

P.
168

[REDACTED] NSA complied by applying USSID SP0018 minimization procedures. For example, and as described in the following sections:

- The collection of U.S. person information was minimized by [REDACTED]

~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~

P.
167

~~TOP SECRET//STLW//COMINT//ORCON/NOFORN~~ ST-09-0002

accomplishment of the mission of detection and prevention of acts of terrorism within the United States." NSA complied by applying USSID SP0018 minimization procedures. For example, and as described in the following sections:

- The collection of U.S. person information was minimized by [REDACTED]

~~(TS//SI//NF)~~ PSP Operations: Metadata

P.
169

~~(TS//STLW//SI//OC/NF)~~ The Authorization defines "metadata" as [REDACTED]. For example, e-mail message metadata includes the sender and recipient e-mail addresses. It does not include the subject line or the text of the e-mail, which are considered content. Telephony metadata includes such information as the calling and called telephone numbers, but not spoken words.

~~(TS//SI//NF)~~ PSP Operations: Metadata

P.
168

~~(TS//STLW//SI//OC/NF)~~ The Authorization defines "metadata" as "header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication." For example, e-mail message metadata includes the sender and recipient e-mail addresses. It does not include the subject line or the text of the e-mail, which are considered content. Telephony metadata includes such information as the calling and called telephone numbers, but not spoken words.

P.
171

~~(S//NF)~~ The Associate General Counsel for Operations said that establishing a link to international terrorist groups or al-Qa'ida and its affiliates met the Authorization's requirement that all activities conducted under the PSP be for the purpose of detecting and preventing terrorist acts within the United States. He explained that because the President had determined that [REDACTED] international terrorist groups al-Qa'ida presented a threat within the United States, regardless of where members were located, linking a target selector to such groups established that the collection was for

¹³(U) Smith v. Maryland, 442 U.S. 735, 742 (1979).
¹⁴(TS//SI//NF) [REDACTED]

P.
170

~~(S//NF)~~ The Associate General Counsel for Operations said that establishing a link to international terrorist groups or al-Qa'ida and its affiliates met the Authorization's requirement that all activities conducted under the PSP be for the purpose of detecting and preventing terrorist acts within the United States. He explained that because the President had determined that specified international terrorist groups and al-Qa'ida presented a threat within the United States, regardless of where members were located, linking a target selector to such groups established that the collection was for

¹³(U) Smith v. Maryland, 442 U.S. 735, 742 (1979).
¹⁴(TS//SI//NF) In March and April 2004, authorization language for bulk and Internet metadata and content narrowed from "international terrorism, or activities in preparation therefor," to Al-Qa'ida, a group affiliated with Al-Qa'ida, or another group that the President determined was in armed conflict with the United States and posed a threat of hostile action within the United States.

P. 175

~~(TS//STLW//SI//OC/NF)~~ Under the PSP [REDACTED] Before NSA personnel tasked target selectors for PSP content collection, the Authorization required that target selectors comply with two criteria. First, they had to determine that [REDACTED] as described in guidance issued by OGC in 2005. Second, the purpose of the collection had to be the prevention and detection of terrorist attacks in the United States. The OGC provided the same guidance for tasking selectors for content collection as it had for contact chaining. Specifically, because the President had determined that al-Qa'ida presented a threat within the United States, regardless of where its members were located, linking a target selector to designated international terrorist groups or al-Qa'ida and its affiliates, established that the collection was for the purpose of detection and prevention of terrorist acts within the United States.

P. 174

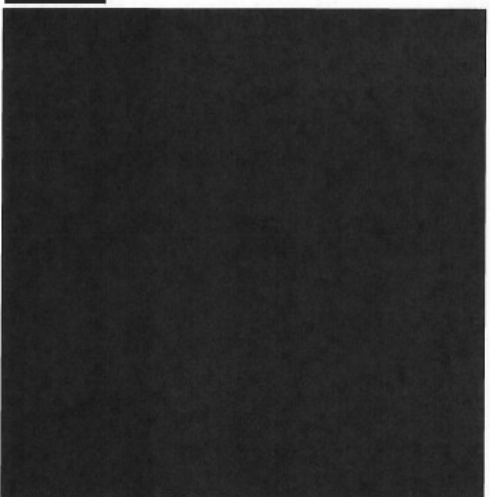
~~(TS//STLW//SI//OC/NF)~~ Under the PSP, (b)(1), (b)(3) [REDACTED] Before NSA personnel tasked target selectors for PSP content collection, the Authorization required that target selectors comply with two criteria. First, they had to determine that "based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe a party to such communication is an agent of al-Qa'ida, or a group affiliated with al-Qa'ida," as described in guidance issued by OGC in 2005. Second, the purpose of the collection had to be the prevention and detection of terrorist attacks in the United States. The OGC provided the same guidance for tasking selectors for content collection as it had for contact chaining. Specifically, because the President had determined that al-Qa'ida presented a threat within the United States, regardless of where its members were located, linking a target selector to designated international terrorist groups or al-Qa'ida and its affiliates, established that the collection was for the purpose of detection and prevention of terrorist acts within the United States.

P. 232

~~TOP SECRET//SI//HCS/COMINT//ORCON//NOFORN~~
~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~ ST-09-0002

(U) The Presidential Authorizations

~~(TS//STLW//SI//OC/NF)~~ The Authorization documents that contained the terms under which NSA executed special Presidential authority were addressed to the Secretary of Defense and were titled "Presidential Authorization for Specified Electronic Surveillance Activities during a Limited Period to Detect and Prevent Acts of Terrorism within the United States." The first Authorization consisted of [REDACTED] paragraphs, and all but one subsequent Authorization consisted of nine. There were 43 Authorizations, two modifications, and one document described as [REDACTED]. There were 43 Authorizations, two modifications, and one document described as [REDACTED].



~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~
~~TOP SECRET//SI//HCS/COMINT//ORCON//NOFORN~~ 145

(U) The Presidential Authorizations

~~(TS//STLW//SI//OC/NF)~~ The Authorization documents that contained the terms under which NSA executed special Presidential authority were addressed to the Secretary of Defense and were titled "Presidential Authorization for Specified Electronic Surveillance Activities during a Limited Period to Detect and Prevent Acts of Terrorism within the United States." The first Authorization consisted of eight paragraphs, and all but one subsequent Authorization consisted of nine. There were 43 Authorizations, two modifications, and one document described as [REDACTED].

Description of Authorization contents by paragraph:

(U) Paragraph 1 - The President's Conclusions

P. 231

~~(TS//STLW//SI//OC/NF)~~ The first paragraph referred to the 11 September 2001 terrorist attacks and the President's directions [to the Secretary of Defense] on employing U.S. Armed Forces. The first Authorization contained statements on the President's conclusions based on information about terrorist capabilities; this statement became the second paragraph in subsequent Authorizations. After the first Authorization, paragraph one included references to all previous versions of the Authorization and the dates they were signed by the President.

(U) Paragraph 2 - Terrorism Threat

~~(TS//STLW//SI//OC/NF)~~ After the first Authorization, the second paragraph stated that the President based his conclusions about terrorist capabilities on information provided by the DCI, including an attached terrorism threat assessment, a document that consisted of five or more pages and was signed by the DCI (later by the DNI) and the Secretary of Defense.

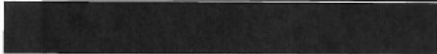
(U) Paragraph 3 - Considerations

~~(TS//STLW//SI//OC/NF)~~ The third paragraph contained the President's considerations in authorizing electronic surveillance, including the potential for deaths, injuries, and destruction from acts of terrorism, their probability, the need for action and secrecy, and intrusion into privacy, its reasonableness, and alternatives. In the first Authorization the considerations were in paragraph two.

~~(TS//STLW//SI//OC/NF)~~ Paragraph three of the first Authorization stated the President's determination that an

~~TOP SECRET//STLW//COMINT//ORCON//NOFORN~~

P. 233



P. 232

"extraordinary emergency" existed made electronic surveillance without a court order a compelling Government interest.¹

~~(TS//STLW//SI//OC/NF)~~ Paragraph 4 - Authorized Electronic Surveillance

~~(TS//STLW//SI//OC/NF)~~ Paragraph four contains the President's statement of the basis for issuing the authority and the substantive description of the electronic surveillance that he authorized and directed. The President states that he is acting pursuant to Article II of the Constitution, including the executive power, his authority as Commander in Chief of the Armed Forces, his duty to preserve, protect and defend the Constitution, and the Authorization for Use of Military Force Joint Resolution (Public Law 107-40), with due regard for the Fourth Amendment. There were major and minor changes in that description, resulting in seven versions of paragraph four over approximately six years.

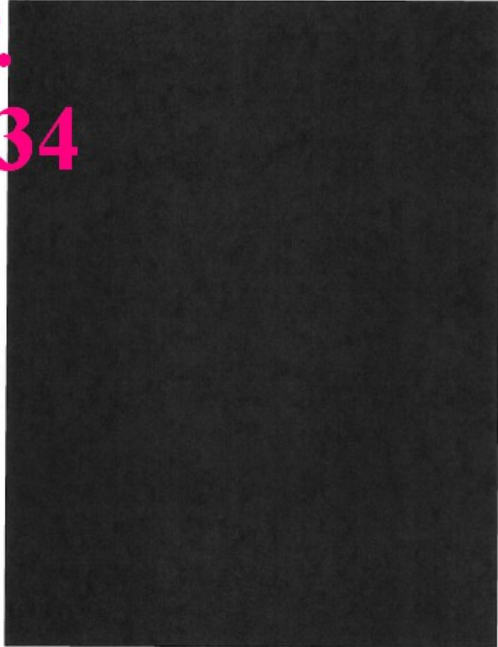
~~(TS//SI//NF)~~ Changes to Authorization Language on Electronic Surveillance

~~(TS//STLW//SI//OC/NF)~~

Version/Date	Description of Changes to Authorization Language
First Authorization 4 October 2001	Authorized NSA to acquire the content and associated metadata of telephony and Internet communications including wire and cable communications carried into or out of the United States for which there was probable cause to believe that one of the communicants was engaged in or preparing for acts of international terrorism ² and one communicant was engaged in or preparing for acts of international terrorism. ² This was the only version of the Authorization to use the term "probable cause." Version 1 also authorized the acquisition of telephony and Internet metadata for communications with at least one communicant outside the United States or for which no communicant was known to be a citizen of the United States. Paragraph four included the authority to

¹(U) The third paragraph was marked with the number three in two places until the error was corrected in the September 2003 authorization.
²(U) This parenthetical condition is present in all descriptions of content collection.

P.
234

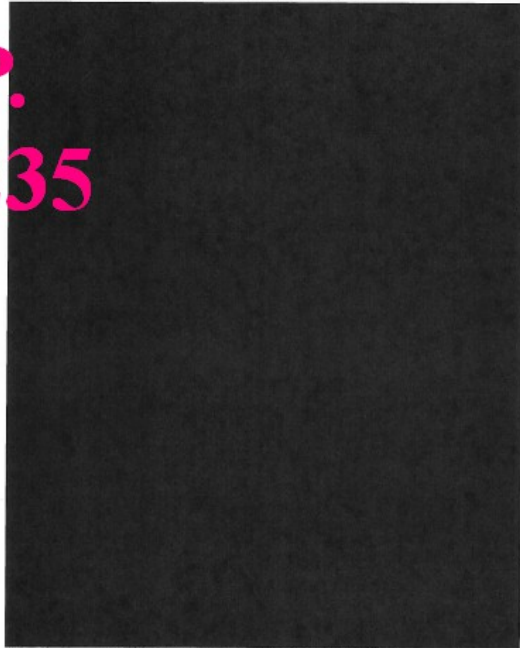


P.
233

Version/Date	Description of Changes to Authorization Language
	retain, process, analyze and disseminate intelligence from the communications acquired under the authority.
Version 2 2 November 2001 and 30 November 2001	Authorized NSA to acquire the content and associated metadata of communications for which there was "reasonable grounds to believe" that one of the communicants was (b)(1), (b)(3) that one communicant was outside the United States and was engaged in or preparing for acts of international terrorism. ³ This change to the wording on collecting content eliminated the possibility of interpreting the authority to permit collection with both ends in the United States. This version also authorized the acquisition of telephony and internet metadata for communications with at least one communicant outside the United States, with no communicant known to be a citizen of the United States, or when there were reasonable grounds to believe that the communication related to international terrorism or activities in preparation for international terrorism. Version 2 was used in two Authorization documents.
Version 3 9 January 2002 to 14 January 2004	Eliminated (b)(1), (b)(3) but was otherwise identical to the previous version. This version of the authorizing provision was used in 19 of the documents.
Version 4 11 March 2004	Stated that the Department of Defense may obtain and retain internet and telephony metadata (b)(1), (b)(3) on the condition that search and retrieval of that information was conducted in accordance with the Authorization. The term "acquire" was defined with respect to metadata as the act of moving stored data. (b)(1), (b)(3) The provision contained the President's statement that both

³(U) Qualified as "based on the factual and practical considerations of everyday life on which reasonable persons act."

P.
235



P.
234

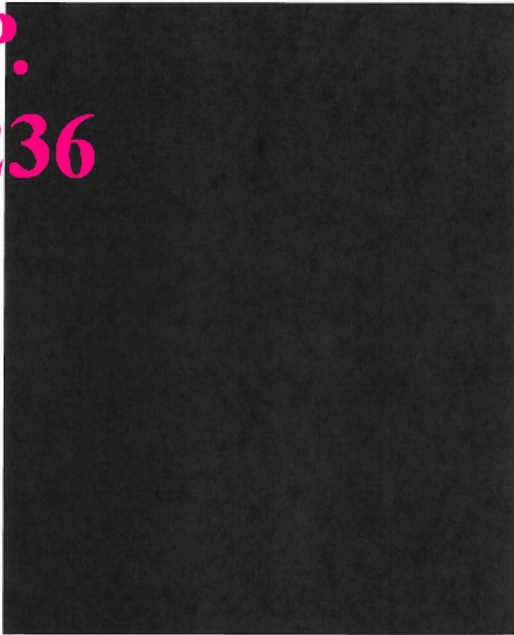
Version/Date	Description of Changes to Authorization Language
	these clarifications were consistent with all previous Authorizations and thus approval for acting under that definition was retroactive.
Version 5 19 March 2004	Became effective in the middle of a previously authorized period as the result of a modification. NSA's authority to collect content and associated metadata was changed to specify that the terrorist groups for which there was authority to collect were al-Qa'ida, groups affiliated with al-Qa'ida, or another group that the President determined was in armed conflict with the United States. NSA's authority to [REDACTED] D(1), (b)(3)
Version 6 2 April 2004 to 10 September 2005	Also became effective in the middle of a previously authorized period as the result of a modification. NSA's authority [REDACTED] b(1), (b)(3) al-Qa'ida, a group affiliated with al-Qa'ida, or of another group that the President determined was in armed conflict with the United States. Version 6 was used in 12 of the documents.
Version 7 26 October 2005 to 8 December 2006	Added the clarification that [REDACTED] the provision was otherwise identical to that in version 6. Version 7 and was used in the final nine documents.

(TS//STLW//SI//OC/NP)

(U//FOUO) Paragraph 5 - Detect and Prevent

~~(TS//STLW//SI//OC/NP)~~ In paragraph five, the President stated that the surveillance was essential and appropriate to

P.
236



P.
235

detect and prevent future acts of terrorism in the United States.

(U//FOUO) Paragraph 6 - Minimization

~~(TS//STLW//SI//OC/NF)~~ Paragraph six directed that information concerning American citizens be minimized to the extent consistent with the mission and with the Authorization.

(U//FOUO) Paragraph 7 - Notifying Congress

~~(TS//STLW//SI//OC/NF)~~ Paragraph seven stated that notification of the Authorization outside the executive branch would be deferred, but the President stated his intent to notify Congress when consistent with national defense. When select members of Congress were briefed on the Program, information on the briefings was contained in paragraph eight.

(U) Paragraph 8 - Other Notifications

~~(TS//STLW//SI//OC/NF)~~ The initial Authorization specified that collection would cease 30 days after signature and required reporting on changes in circumstances underlying the Authorization. After the initial Authorization, paragraph eight contained a statement on restricting notifications to U.S. Government officials outside the executive branch or it named individuals, by title, who had been informed since the previous Authorization period expired.

(U) Paragraph 9 - Expiration

~~(TS//STLW//SI//OC/NF)~~ After the initial Authorization, the exact date of expiration was specified in paragraph nine.

(U//FOUO) Paragraph 10 - "The President's Ultimate Responsibility"

~~(TS//STLW//SI//OC/NF)~~ The Authorization signed in March of 2004 - the only one not signed by the Attorney General or a Deputy Attorney General - is also the only Authorization that contains a paragraph ten. This paragraph contained a legal argument about the President's ultimate responsibility to interpret the law on behalf of the executive branch and his authority for issuing the Authorization.

P. 237



P.
236

(U) Handwritten Note

~~(TS//STLW//SI//OC/NF)~~ The first 2 and the last 29 Authorizations, both modifications, and ~~(b)(1), (b)(3)~~ have a handwritten note signed by the Secretary of Defense (or Deputy Secretary of Defense) directing the NSA or the Director of NSA to execute the document.

P. 352

Secretary of Defense to ~~(b)(1), (b)(3)~~

provided the surveillance met certain criteria. The specific criteria are described in detail in Chapters Three and Four of this report.

~~(TS//STLW//SI//OC/NF)~~

P.
351

Secretary of Defense to "use the capabilities of the Department of Defense, including but not limited to the signals intelligence capabilities of the National Security Agency, to collect foreign intelligence by electronic surveillance," provided the surveillance met certain criteria. The specific criteria are described in detail in Chapters Three and Four of this report.

~~(TS//STLW//SI//OC/NF)~~

P.

353

B. Findings and Primary Authorities (U)

In this section, we describe certain features common to all the Presidential Authorizations. Each of the Presidential Authorizations included a finding to the effect that terrorist groups of global reach possessed the intent and capability to attack the United States, that an extraordinary emergency continued to exist, and that these circumstances "constitute an urgent and compelling governmental interest"

The primary authorities cited for the legality of these electronic surveillance and related activities were Article II of the Constitution and the Authorization for Use of Military Force Joint Resolution.

The President also noted his intention to inform appropriate members of the Senate and the House of Representatives of the program "as soon as I judge that it can be done consistently with national defense needs." Some Presidential Authorizations described briefings given to members of Congress and FISA Court judges.

APPROVED FOR PUBLIC RELEASE

~~TOP SECRET//STLW//RCB//SI//ORCON//NOFORN~~

~~(S//STLW//SI//OC/NF)~~

~~(S//STLW//SI//OC/NF)~~

~~(S//STLW//SI//OC/NF)~~

P.

352

B. Findings and Primary Authorities (U)

In this section, we describe certain features common to all the Presidential Authorizations. Each of the Presidential Authorizations included a finding to the effect that terrorist groups of global reach possessed the intent and capability to attack the United States, that an extraordinary emergency continued to exist, and that these circumstances "constitute an urgent and compelling governmental interest permitting electronic surveillance within the United States for counterterrorism purposes, without a court order."

The primary authorities cited for the legality of these electronic surveillance and related activities were Article II of the Constitution and the Authorization for Use of Military Force Joint Resolution. The Authorizations further provided that any limitation in Executive Order 12333 or any other Presidential directive inconsistent with the Presidential Authorizations shall not apply, to the extent of the inconsistency, to the electronic surveillance authorized under the Stellar Wind program.

Each Authorization also included the President's determination that to assist in preserving the secrecy necessary to "detect and prevent acts of terrorism against the United States," the Secretary of Defense was to defer notification of the Authorizations outside of the Executive Branch and the activities carried out pursuant to them. The President also noted his intention to inform appropriate members of the Senate and the House of Representatives of the program "as soon as I judge that it can be done consistently with national defense needs." Some Presidential Authorizations described briefings given to members of Congress and FISA Court judges.

~~TOP SECRET//STLW//RCB//SI//ORCON//NOFORN~~

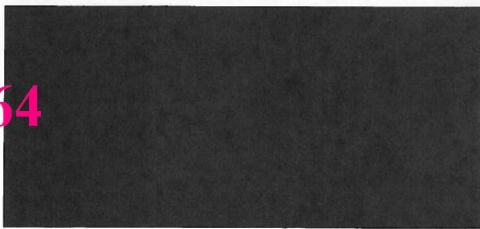
~~(S//STLW//SI//OC/NF)~~

~~(S//STLW//SI//OC/NF)~~

~~(S//STLW//SI//OC/NF)~~

P.

364



~~TOP SECRET//STLW//RCB//SI//ORCON//NOFORN~~

P.

363

(b) (6) is an example of how the October 4 memorandum did not reflect the Stellar Wind program as it was actually devised and operated by the NSA. The Stellar Wind program did not contemplate bulk collection of content communications. The only information collected in bulk under the program involved telephony and e-mail meta data. This meta data was collected in bulk so that it could then be queried based on telephone numbers or e-mail addresses associated with communicants with known or suspected links to international terrorism. These telephone numbers and e-mail addresses are known as "selectors."

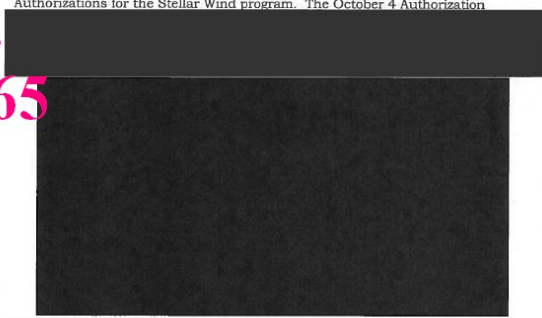
~~TOP SECRET//STLW//RCB//SI//ORCON//NOFORN~~

2. Presidential Authorization of October 4, 2001
~~(TS//SI//NF)~~

On October 4, 2001, President Bush issued the first of 43 Presidential Authorizations for the Stellar Wind program. The October 4 Authorization

P.

365



³⁵ Gonzales noted that Deputy White House Counsel Timothy Flanigan, the recipient of the first Yoo memorandum, was not read into Stellar Wind. (U//FOUO)

P.

364

2. Presidential Authorization of October 4, 2001
~~(TS//SI//NF)~~

On October 4, 2001, President Bush issued the first of 43 Presidential Authorizations for the Stellar Wind program. The October 4 Authorization directed the Secretary of Defense to "use the capabilities of the Department of Defense, including but not limited to the signals intelligence capabilities of the National Security Agency, to collect foreign intelligence by electronic surveillance," provided the surveillance was intended to:

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which there is probable cause to believe that (b)(1), (b)(3) a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or an agent of such a group; or
- (b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States or (ii) no party to such communication is known to be a citizen of the United States.

³⁵ Gonzales noted that Deputy White House Counsel Timothy Flanigan, the recipient of the first Yoo memorandum, was not read into Stellar Wind. (U//FOUO)

P.

366

The Authorization stated that it relied primarily on Article II of the Constitution and on the recently passed Authorization for the Use of Military Force (AUMF) to support the intelligence-gathering activities. The Authorization also stated that the President's directive was based on threat assessments indicating that terrorist groups remained determined to attack in the United States. The Authorization stated that it was to terminate from the date of its execution.

~~(S//STLW//SI//OC/NF)~~

P.

365

The Authorization stated that it relied primarily on Article II of the Constitution and on the recently passed Authorization for the Use of Military Force (AUMF) to support the intelligence-gathering activities. The Authorization also stated that the President's directive was based on threat assessments indicating that terrorist groups remained determined to attack in the United States. The Authorization stated that it was to terminate "not later than 30 days" from the date of its execution.

~~(S//STLW//SI//OC/NF)~~

1. Presidential Authorization of November 2, 2001
(TS//SI//NF)

P.
368

On November 2, 2001, with the first Presidential Authorization set to expire, President Bush signed a second Presidential Authorization. The second Authorization relied upon the same authorities in support of the President's actions, chiefly the Article II Commander-in-Chief powers and the AUMF. The second Authorization cited the same findings in a threat assessment as to the magnitude of the potential threats and the likelihood of their occurrence in the future.

[REDACTED]

³⁹ By October 4, 2001, Yoo had already drafted two legal analyses on a hypothetical warrantless surveillance program and therefore already had done some work related to the program prior to October 4 when Ashcroft was read in. (TS//SI//NF)

1. Presidential Authorization of November 2, 2001
(TS//SI//NF)

P.
367

On November 2, 2001, with the first Presidential Authorization set to expire, President Bush signed a second Presidential Authorization. The second Authorization relied upon the same authorities in support of the President's actions, chiefly the Article II Commander-in-Chief powers and the AUMF. The second Authorization cited the same findings in a threat assessment as to the magnitude of the potential threats and the likelihood of their occurrence in the future. However, the scope of authorized content collection and meta data acquisition was redefined by adding the italicized language below in paragraphs 4(a) and (b):

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life there are reasonable grounds to believe that

³⁹ By October 4, 2001, Yoo had already drafted two legal analyses on a hypothetical warrantless surveillance program and therefore already had done some work related to the program prior to October 4 when Ashcroft was read in. (TS//SI//NF)

APPROVED FOR PUBLIC RELEASE

~~TOP SECRET//SI//NF//ORCON//NOFORN~~

P.
369

[REDACTED]

[REDACTED]

32

~~TOP SECRET//SI//NF//ORCON//NOFORN~~

~~TOP SECRET//SI//NF//ORCON//NOFORN~~

P.
368

(b)(1)(C) such communication originated or terminated outside the United States and a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group; or

- (b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor.

The new language therefore changed in three key respects the scope of collection and acquisition authorized under the Stellar Wind program. First, the "probable cause to believe" standard for the collection of e-mail and telephone content was replaced with "for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe . . ." Baker told us this change was made by Addington because he believed the term "probable cause" was "too freighted" with usage in judicial opinions. Baker said he believed the change to more colloquial language also was made because the standard was to be applied by non-lawyers at the NSA.

Second, the new standard applied to the reasonable belief that "such communication originated or terminated outside the United States . . ." The new language therefore eliminated the authority that existed in the first Authorization to intercept the content of purely domestic communications.

Third, the second Authorization permitted the acquisition of a third category of e-mail and telephony meta data when "based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor." This language represented an expansion of meta data collection authority to include meta data pertaining to certain communications even when both parties are U.S. persons, as long as there were facts giving reason to believe that the communication was related to international terrorism.

32

~~TOP SECRET//SI//NF//ORCON//NOFORN~~

OLC Principal Deputy and Acting Assistant Attorney General Bradbury told the OIG that

P.
375

Accordingly, the fourth Presidential Authorization, signed on January 9, 2002, modified the scope of collection to provide:

[REDACTED]

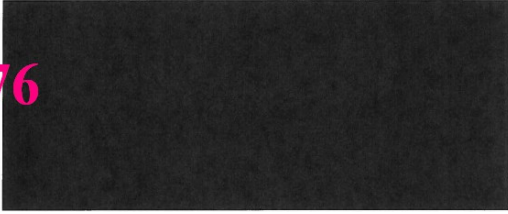
OLC Principal Deputy and Acting Assistant Attorney General Bradbury told the OIG that

P.
374

Accordingly, the fourth Presidential Authorization, signed on January 9, 2002, modified the scope of collection to provide:

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe such communication originated or terminated outside the United States and a party to such communication is a group

P.
376



P.
375

engaged in international terrorism, or activities in preparation therefor, or any agent of such a group; or
(b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor.

P.
442

¹²⁰ See Presidential Authorization of April 22, 2003 at para. 4(b)(i) & (ii). The April 22, 2003, Authorization was the only Authorization personally approved as to form and legality by Yoo. He approved the Authorization on April 18, 2003, five days before the date of his talking points memorandum. ~~(TS//STLW//SI//OC/NF)~~

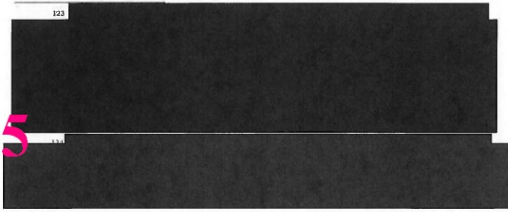


P.
441

¹²⁰ See Presidential Authorization of April 22, 2003 at para. 4(b)(i) & (ii). The April 22, 2003, Authorization was the only Authorization personally approved as to form and legality by Yoo. He approved the Authorization on April 18, 2003, five days before the date of his talking points memorandum. ~~(TS//STLW//SI//OC/NF)~~

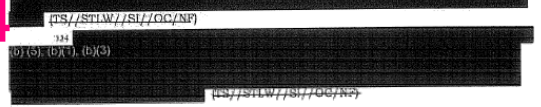
¹²¹ In fact, as discussed in Chapter Five, the reasonable articulable suspicion standard was the only standard the government sought to apply to its authority to query the e-mail meta data collection after basket 3 of Stellar Wind was placed under FISA authority in July 2004. ~~(TS//STLW//SI//OC/NF)~~

P.
445



P.
444

¹²³ As described later in this chapter, the term "acquired" was not clarified until the March 11, 2004, Presidential Authorization. That Authorization stated that meta data was "acquired" . . . when, and only when, the Department of Defense has searched for and retrieved such header/router/addressing-type information, including telecommunications dialing-type data (and not when the Department obtains such header/router/addressing-type information, including telecommunications dialing-type data, such as (b)(1), (b)(3) for retention)."



P.
470

Gonzales's notes indicate that when he was asked at the meeting why Comey was "reluctant" to sign the Authorization, Gonzales responded [redacted]. The notes do not indicate what else was discussed about the basis for the Department's concerns about the legal support for the program. ~~(TS//STLW//SI//OC/NF)~~

P.
469

Gonzales's notes indicate that when he was asked at the meeting why Comey was "reluctant" to sign the Authorization, Gonzales responded, "I said it was not really my place to represent [Comey's] position, but I believed that he did not feel that the President's Constitutional authority would not [sic] override FISA." The notes do not indicate what else was discussed about the basis for the Department's concerns about the legal support for the program. ~~(TS//STLW//SI//OC/NF)~~

The notes indicate that Andrew Card stated that "it would be hard to

P.
481

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

7. March 11, 2004: Gonzales Certifies Presidential Authorization as to Form and Legality (TS//SI//NF)

On the morning of March 11, 2004, with the Presidential Authorization set to expire, President Bush signed a new Authorization.¹⁶⁹ In a departure from the past practice of having the Attorney General certify the Authorization as to form and legality, the March 11 Authorization was certified by White House Counsel Gonzales. The March 11 Authorization also differed markedly from prior Authorizations in three other respects. (TS//STLW//SI//OC/NF)

The first significant difference between the March 11, 2004, Presidential Authorization and prior Authorizations was the President's explicit assertion that the exercise of his Article II Commander-in-Chief authority

As discussed above, FISA and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2521 (generally referred to as Title III) are by their terms the "exclusive means by which electronic surveillance, as defined in [FISA], and the interception of domestic wire, oral, and electronic communications may be conducted." 18 U.S.C. § 2511(2)(f). This new language was based on the same legal rationale Yoo first advanced in support of the Stellar Wind program - that FISA cannot be read to infringe upon the President's Commander-in-Chief authority under Article II of the Constitution during wartime. (TS//STLW//SI//OC/NF)

Steven Bradbury told the OIG that he believed the language was included in the March 11 Authorization as a way of indicating that the President did not agree with Goldsmith and Philbin's analysis, and to protect those who had been implementing the program under the prior OLC opinions. (TS//SI//NF)

Second,

¹⁶⁹ The March 11, 2004, Presidential Authorization stated that it would expire on May 6, 2004. (TS//SI//NF)

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

P.
480

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

7. March 11, 2004: Gonzales Certifies Presidential Authorization as to Form and Legality (TS//SI//NF)

On the morning of March 11, 2004, with the Presidential Authorization set to expire, President Bush signed a new Authorization.¹⁶⁹ In a departure from the past practice of having the Attorney General certify the Authorization as to form and legality, the March 11 Authorization was certified by White House Counsel Gonzales. The March 11 Authorization also differed markedly from prior Authorizations in three other respects. (TS//STLW//SI//OC/NF)

The first significant difference between the March 11, 2004, Presidential Authorization and prior Authorizations was the President's explicit assertion that the exercise of his Article II Commander-in-Chief authority "displace[s] the provisions of law, including the Foreign Intelligence Surveillance Act and chapter 119 of Title 18 of the United States Code (including 18 U.S.C. § 2511(f) relating to exclusive means), to the extent of any conflict between the provisions and such exercises under Article II[.]" As discussed above, FISA and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2521 (generally referred to as Title III) are by their terms the "exclusive means by which electronic surveillance, as defined in [FISA], and the interception of domestic wire, oral, and electronic communications may be conducted." 18 U.S.C. § 2511(2)(f). This new language was based on the same legal rationale Yoo first advanced in support of the Stellar Wind program - that FISA cannot be read to infringe upon the President's Commander-in-Chief authority under Article II of the Constitution during wartime. (TS//STLW//SI//OC/NF)

Subsequent Presidential Authorizations did not include this language discussing the legal bases for the program. Steven Bradbury told the OIG that he believed the language was included in the March 11 Authorization as a way of indicating that the President did not agree with Goldsmith and Philbin's analysis, and to protect those who had been implementing the program under the prior OLC opinions. (TS//SI//NF)

Second, to narrow the gap between the authority given on the face of prior Authorizations and the actual operation of the program by the NSA, the terms governing the collection of telephony and e-mail meta data were clarified. The underlying language for "acquiring" both telephony and e-mail meta data remained as it had been, giving the NSA authority to:

¹⁶⁹ The March 11, 2004, Presidential Authorization stated that it would expire on May 6, 2004. (TS//SI//NF)

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

P.
482

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

[REDACTED]

[REDACTED]

(TS//SI//NF)

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

P.
481

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor. (TS//STLW//SI//OC/NF)

Presidential Authorization, March 11, 2004, para. 4(b). However, this language was now qualified by the following two subparagraphs:

- (i) the Department of Defense may obtain and retain header/router/addressing-type information, including telecommunications dialing-type data, (b)(1), (b)(3) provided that search and retrieval from such obtained header/router/addressing-type information, including telecommunications dialing-type data, shall occur only in accordance with this authorization; and
- (ii) header/router/addressing-type information, including telecommunications dialing-type data, is "acquired" for purposes of subparagraph 4(b) above when, and only when, the Department of Defense has searched for and retrieved such header/router/addressing-type information, including telecommunications dialing-type data (and not when the Department obtains such header/router/addressing-type information, including telecommunications dialing-type data, such as (b)(1), (b)(3) for retention).

Id. at para. 4(b)(i) & (ii). (TS//STLW//SI//OC/NF)

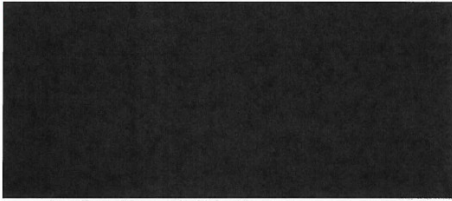
In essence, the March 11, 2004, Authorization for the first time sought to make clear that the NSA could "obtain and retain" telephony and e-mail meta data (baskets 2 and 3) (b)(1), (b)(3) but the meta data collected could only be queried ("acquired") in accordance with any of the three conditions set forth in paragraph 4(b).¹⁷⁰ This language clarifying what the term "acquire"

¹⁷⁰ The term "obtain," as first introduced in the March 11, 2004, Presidential Authorization, was meant to be synonymous with the term "collect." (TS//SI//NF)

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

P.
483

APPROVED FOR PUBLIC RELEASE
~~TOP SECRET//SI//OC/NF~~



P.
482

~~TOP SECRET//SI//OC/NF~~

meant was included in every successive Presidential Authorization for the remainder of the program. (~~TS//SI//OC/NF~~)

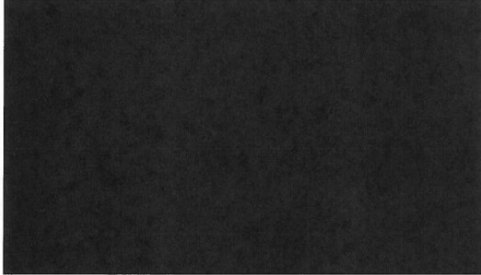
Moreover, the President asserted in the March 11 Authorization that the newly drafted distinction between "obtaining and retaining" meta data versus "acquiring" the meta data "reflects the consistent course of conduct under such Presidential Authorizations that has been known to and authorized by me, and shall be deemed to have been a part of such Presidential Authorizations as if [paragraph 4(b)(i) & (ii)] had been explicitly included in each such Presidential Authorization at the time of presidential signature; any action taken prior to presidential signature of this authorization that is consistent with the preceding sentence is ratified and confirmed."¹⁷ Id. at para. 4(b). (~~TS//SI//OC/NF~~)

P.

506

APPROVED FOR PUBLIC RELEASE
~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

Authorization. The first paragraph of the Modification stated that [REDACTED]
[REDACTED]
The March 19 Modification made two significant changes to the existing Authorization and a third important change affecting all Authorizations. [REDACTED] these changes were to become effective beginning at midnight on [REDACTED]
~~(TS//STLW//SI//OC/NF)~~



~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

P.

505

Authorization. The first paragraph of the Modification stated that "this memorandum, as a policy matter, modifies the Presidential Authorization of March 11, 2004 as set forth below . . . and [REDACTED] granted by all the Presidential Authorizations to the extent set forth [in the Modification]." The March 19 Modification made two significant changes to the existing Authorization and a third important change affecting all Authorizations. To allow for a [REDACTED] these changes were to become effective beginning at midnight on March 26, 2004.
~~(TS//STLW//SI//OC/NF)~~

First, the March 19 Modification inserted language to narrow content collection (basket 1) to al Qaeda and affiliated terrorist groups, as the Department had advised. The new content collection authority in paragraph 4(a) of the March 11 Authorization, with the new language from the March 19 Modification indicated in italics, was:

acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe such communication originated or terminated outside the United States and a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group, *provided that such group is al Qaeda, is a group affiliated with al Qaeda, or is another group that I determine for purposes of this Presidential Authorization is in armed conflict with the United States and poses a threat of hostile action within the United States.* ~~(TS//STLW//SI//OC/NF)~~

P.

515

APPROVED FOR PUBLIC RELEASE
~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

6. [REDACTED] Modification (U)

Attorney General Ashcroft's doctors cleared him to resume his duties as Attorney General as of March 31. Comey advised Ayres in a March 30,

P.

514

~~TOP SECRET//STLW//HCS//SI//ORCON//NOFORN~~

6. April 2, 2004, Modification (U)

Attorney General Ashcroft's doctors cleared him to resume his duties as Attorney General as of March 31. Comey advised Ayres in a March 30, 2004, memorandum that as of 7:00 a.m. on March 31, the Attorney General

P.

519

²¹⁰ This Authorization also dropped the language describing [REDACTED] in the March 11, 2004, Authorization. ~~(TS//SI//NF)~~



P.

518

²¹⁰ This Authorization also dropped the language describing the legal bases on which the President relied in ordering the continuation of the program in the March 11, 2004, Authorization. ~~(TS//SI//NF)~~



P.

684

guilty plea would have on the government's *Brady* obligations.
~~(TS//STLW//SI//OC/NF)~~



P.

683

guilty plea would have on the government's *Brady* obligations.
~~(TS//STLW//SI//OC/NF)~~

Wray also told us that there was no organized Departmental effort to establish formal procedures for reviewing international terrorism prosecutions to comply with Rule 16 disclosure requests and *Brady* obligations. He said "the thinking was" that the Rowan memorandum was the "first step" toward devising "some kind of systematized process" for such reviews. However, we found no indication that OLC followed up on Rowan's request to further study these discovery issues with any kind of written product. ~~(TS//STLW//SI//OC/NF)~~

P.

696

The Department took steps to respond [REDACTED] to discovery motions [REDACTED]

However, the Department's handling of these motions did not require the Department to identify the potentially discoverable information derived under the Stellar Wind program that may exist in other cases. We recommend that the Department, in coordination with the NSA, develop and implement a procedure for identifying Stellar Wind-derived information that may be associated with international terrorism cases, currently pending or likely to be brought in the future, and to evaluate such information in light of the government's discovery obligations under Rule 16 and Brady.
~~(TS//STLW//SI//OC/NF)~~

P.

695

The Department took steps to respond, on a case-by-case basis, to discovery motions [REDACTED] (b)(1), (b)(3)

However, the Department's handling of these motions did not require the Department to identify the potentially discoverable information derived under the Stellar Wind program that may exist in other cases. We recommend that the Department, in coordination with the NSA, develop and implement a procedure for identifying Stellar Wind-derived information that may be associated with international terrorism cases, currently pending or likely to be brought in the future, and to evaluate such information in light of the government's discovery obligations under Rule 16 and Brady.
~~(TS//STLW//SI//OC/NF)~~

P.
740

No Justice Department attorneys with terrorism prosecution responsibilities were read into the Stellar Wind program until mid-2004, and as a result the Department continued to lack the advice of attorneys who were best equipped to identify and examine the discovery issues in connection with the program. Since that time the Department has taken steps to respond [redacted] to [redacted] discovery motions

[redacted] These responses involve the use of the Classified Information Procedures Act, 18 U.S.C. App. 3, to file *ex parte* in camera pleadings with federal courts to describe any potentially responsive Stellar Wind-derived information. [redacted]

P.
739

No Justice Department attorneys with terrorism prosecution responsibilities were read into the Stellar Wind program until mid-2004, and as a result the Department continued to lack the advice of attorneys who were best equipped to identify and examine the discovery issues in connection with the program. Since that time the Department has taken steps to respond, on a case-by-case basis, to [redacted] discovery motions

(b)(1), (b)(3)

[redacted] These responses involve the use of the Classified Information Procedures Act, 18 U.S.C. App. 3, to file *ex parte* in camera pleadings with federal courts to describe any potentially responsive Stellar Wind-derived information. [redacted]

P.
740

[redacted] we recommend that the Department assess its discovery obligations regarding Stellar Wind-derived information in international terrorism prosecutions. We also recommend that the Department carefully consider whether it must re-examine past cases to see whether potentially discoverable but undisclosed Rule 16 or *Brady* material was collected by the NSA under the program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases. We also recommend that the Department, in coordination with the NSA, implement a procedure to identify Stellar Wind-derived information that may be associated with international terrorism cases currently pending or likely to be brought in the future and evaluate whether such information should be disclosed in light of the

P.
739

However, the Department of Justice continues to lack a comprehensive process for identifying potentially discoverable Stellar Wind information in terrorism cases. In this regard, we recommend that the Department assess its discovery obligations regarding Stellar Wind-derived information in international terrorism prosecutions. We also recommend that the Department carefully consider whether it must re-examine past cases to see whether potentially discoverable but undisclosed Rule 16 or *Brady* material was collected by the NSA under the program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases. We also recommend that the Department, in coordination with the NSA, implement a procedure to identify Stellar Wind-derived information that may be associated with international terrorism cases currently pending or likely to be brought in the future and evaluate whether such information should be disclosed in light of the