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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.
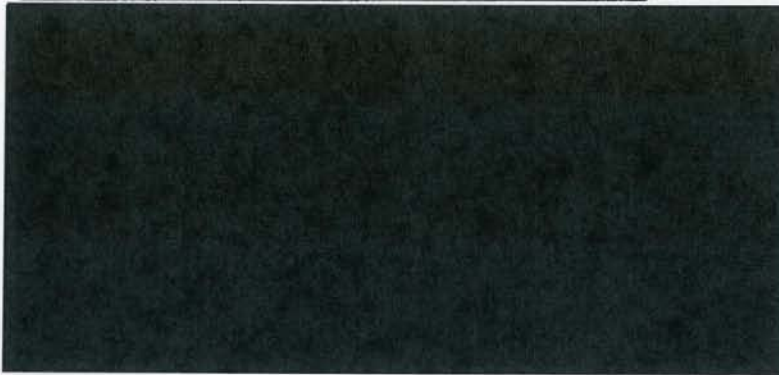
Docket Number:
PR/TT

**DECLARATION OF LIEUTENANT GENERAL KEITH B. ALEXANDER,
UNITED STATES ARMY, DIRECTOR OF THE NATIONAL SECURITY AGENCY
IN RESPONSE TO THE ███████████ ORDER OF
THE FOREIGN INTELLIGENCE SURVEILLANCE COURT**

(U) I, Lieutenant General Keith B. Alexander, depose and state as follows:

(U) I am the Director of the National Security Agency ("NSA" or "Agency"), an

intelligence agency within the Department of Defense ("DoD"), and have served in this position

since 2005. I currently hold the rank of Lieutenant General in the United States Army and,

concurrent with my current assignment as Director of the National Security Agency, I also serve

as the Chief of the Central Security Service and as the Commander of the Joint Functional

Component Command for Network Warfare. Prior to my current assignment, I have held other

senior supervisory positions as an officer of the United States military, to include service as the

Classified By: The President of the United States
Reason: 1.4(c)
Declassify Only Upon the Determination of the President

Deputy Chief of Staff (DCS, G-2), Headquarters, Department of the Army; Commander of the United States Army's Intelligence and Security Command; and the Director of Intelligence, United States Central Command.

(S) As the Director of the National Security Agency, I am responsible for directing and overseeing all aspects of NSA's cryptologic mission, which consists of three functions: to engage in signals intelligence ("SIGINT") activities for the United States Government, to include support to the Government's computer network attack activities; to conduct activities concerning the security of United States national security telecommunications and information systems; and to conduct operations security training for the United States Government. Some of the information NSA acquires as part of its SIGINT mission is collected pursuant to Orders issued under the Foreign Intelligence Surveillance Act of 1978, as amended ("FISA").

(U) The statements herein are based upon my personal knowledge, knowledge provided to me by my subordinates in the course of my official duties, advice of counsel, and conclusions reached in accordance therewith.

I. (U) Purpose:

(TS//SI//NF) This declaration responds to the Order dated ████████████ which directed the Government to verify to the Foreign Intelligence Surveillance Court ("FISC" or "Court") that it is performing queries in Docket Number PR/TT ████ only in accordance with the Court-ordered standard or fully report any deviation therefrom. The Court's Primary Order authorizes NSA to collect and analyze metadata regarding electronic communications under the pen register and trap and trace provisions of the Foreign Intelligence Surveillance Act. This Primary Order is the current order in a succession of orders dating back to July 14, 2004. NSA

has reviewed the methods by which it has queried the PR/TT metadata from the Court's initial order in July 2004 to the present. Because the detail with which NSA has reported these methods to the Court has varied over the years, I am providing in this declaration a more detailed description of NSA's methods for querying the PR/TT data, along with an historical review of certain reports NSA has previously provided to the Court.

II. (U) NSA's Implementation of the Court's Orders:

(TS//SI//NF) **The Standard.** On July 14, 2004, the Court issued the first of several successive orders authorizing NSA to collect and analyze information regarding electronic communications under the pen register and trap and trace provisions of the Foreign Intelligence Surveillance Act. NSA refers to the July 14, 2004 Order and its successor orders as the PR/TT Orders. Each of the PR/TT Orders authorized NSA to query the metadata collected only with e-mail ███████████████ that met a particular standard:

> [Q]ueries shall be performed only on the basis of a particular known ████████████ after the NSA has concluded, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, that there are facts giving rise to a reasonable articulable suspicion that such an ███████████ is associated with ████████████████████ provided, however, that an ███████████ believed to be used by a U.S. person shall not be regarded as associated with ████████████████ solely on the basis of activities that are protected by the First Amendment to the Constitution.

See, e.g., Docket Number PR/TT ██████, Primary Order at pp. 8-9 (emphasis in original). Each of the PR/TT Orders authorized only certain NSA officials to determine whether an e-mail address or account met the standard, and thus qualified as a "seed" with which to query the metadata. Collectively, NSA refers to these officials as the Designated Approval Authorities. Each of the PR/TT Orders also required NSA's Office of General Counsel "to ensure appropriate

consideration of any First Amendment" concerns by reviewing and approving queries based on seed accounts believed to be used by United States persons. *See, e.g.*, PR/TT Docket Number ███ Primary Order at pp. 8-9, 10-11.

(TS//SI//NF) **Application of the Standard.** NSA has applied the "reasonable articulable suspicion" standard, also called the "RAS" standard, by examining the totality of the information available on an e-mail address proposed for use as a seed. Available information could derive from any authorized source, including Court-authorized electronic surveillance, communications intercepted pursuant to NSA's Executive Order 12333 authority, open source information, information provided by other Intelligence Community agencies, or any combination of these sources. The following examples illustrate the information that might support NSA's determination that an e-mail address proposed for use as a seed is associated with ███

███ and thus met the RAS standard:

- ███
- ███
- ███
- ███
- ███

[1] (TS//SI//NF) ███

(TS//SI//NF) **The Station Table, the Initial RAS-Approval Process, and the Alert List.** As of July 14, 2004, the date the Court issued the first PR/TT Order, the NSA had amassed a set of more than ███ e-mail addresses believed to be used by individuals associated with the Foreign Powers. These e-mail addresses (along with other e-mail addresses either ███████ ██ ██████████████ resided in a database referred to as the Station Table.[2] A small percentage of these e-mail addresses were reasonably believed to be used by United States persons.[3] Such addresses carried tags in the Station Table records to denote that they were believed to be used by United States persons.

(TS//SI//NF) When the Court issued the July 14, 2004 PR/TT Order, the Designated Approval Officials, and, when necessary, an attorney in NSA's Office of General Counsel, reviewed each of the e-mail addresses in the set linked to the Foreign Powers to determine which met the RAS standard. Those e-mail addresses that met the standard carried a tag in the "comments" field of the Station Table record to note that they had met the RAS standard. All of these RAS-approved e-mail addresses remained on the Station Table. A subset of this master set of RAS-approved e-mail addresses, those believed to be used by all but the lowest priority targets, became the Alert List. Since the initial PR/TT Order of July 14, 2004, NSA has run continuous automated queries against the PR/TT metadata using the e-mail addresses on the Alert List as seeds. NSA has not included all RAS-approved e-mail addresses on the Alert List because NSA has focused its limited analytical resources toward the higher priority targets.

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[2] (TS//SI//NF) The Station Table includes NSA's historical listing of all terrorism-related e-mail addresses that have undergone a RAS determination, to include the results of the determination.

[3] (TS//SI//NF) As of ███████████ approximately ██████████ e-mail addresses approved for PR/TT querying are reasonably believed to be used by United States persons.

Thus, all of the e-mail addresses on the Alert List are RAS-approved, but not all of the RAS-approved e-mail addresses are on the Alert List.[4]

(TS//SI//NF) From July 14, 2004 to ███████████ (the date on which NSA first sought renewal of the authority granted under the July 14, 2004 Order), the Alert List grew to approximately ████ e-mail addresses. As of ████████████ the Alert List had grown to approximately ██████ e-mail addresses. When NSA receives information that suggests that a RAS-approved e-mail address is no longer associated with one of the Foreign Powers, NSA will change the tag on the Station Table to denote that the address is no longer RAS-approved and will remove the address from the Alert List.[5]

(TS//SI//NF) **RAS-Approval Processes.** An e-mail address may be approved as a PR/TT seed, and may possibly be added to the Alert List, in any of the following ways:

(a)   (TS//SI//NF) *Direct Submission.* NSA has regularly received lead information on potential PR/TT seeds from various sources, including ████████████████████

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██████████████████████ When NSA receives lead information on a proposed seed, one of the

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[4] (TS//SI//NF) NSA uses certain terms in connection with both the BR FISA and the PR/TT – terms such as "alert list," and "automated alerting process." Although the terms may appear to be the same, their meanings may be different for each. For example, all of the e-mail addresses on the PR/TT Alert List are RAS-approved, but, as of ███████████ not all of the telephone numbers on the BR FISA alert list were RAS-approved.

[5] (TS//SI//NF) ██
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Designated Approval Authorities, and when necessary, an attorney in NSA's Office of General

Counsel, will review the proposed seed and the accompanying information to determine if it

meets the RAS standard.

(b)   (TS//SI//NF) *Subject to Court-Authorized Electronic Surveillance or Physical*

Search. Since the PR/TT Order in Docket Number ▆▆▆ (dated ▆▆▆▆▆▆▆, the Court has

authorized NSA to approve certain e-mail addresses under the RAS standard without review by

either a Designated Approval Authority or an attorney in NSA's Office of General Counsel:

> E-mail ▆▆▆▆▆▆▆ that are the subject of electronic surveillance and/or
> physical search authorized by the Foreign Intelligence Surveillance Court (FISC) based
> on the FISC's finding of probable cause to believe that they are used by agents of ▆▆▆
> ▆▆▆▆▆ including those used by U.S. persons, may be deemed approved
> for metadata querying without approval of an NSA official.

See, e.g., PR/TT ▆▆▆ at 9. Thus, e-mail addresses proposed as seeds that satisfy this

prerequisite may be added to the set of RAS-approved e-mail addresses and to the Alert List

without further review. NSA receives weekly reports from the Department of Justice, National

Security Division, that list the e-mail addresses associated with the Foreign Powers that are

subject to Court-authorized electronic surveillance or physical search. Any ▆▆▆▆ e-mail

address approved through this process would have retained the RAS-approved designator, even

after the Court authorization expired, unless NSA had received information to suggest that the

factual support for the Court's probable cause determination was erroneous. Any U.S.-based e-

mail address and/or any e-mail address used by a United States person approved through this

process would have retained the RAS-approved designator only for the duration of the Court

authorized electronic surveillance or physical search. Once that authority expired, NSA would

have removed the RAS-approved designator, unless the e-mail address was submitted to a

Designated Approval Authority and NSA's Office of General Counsel and was approved under the RAS standard.
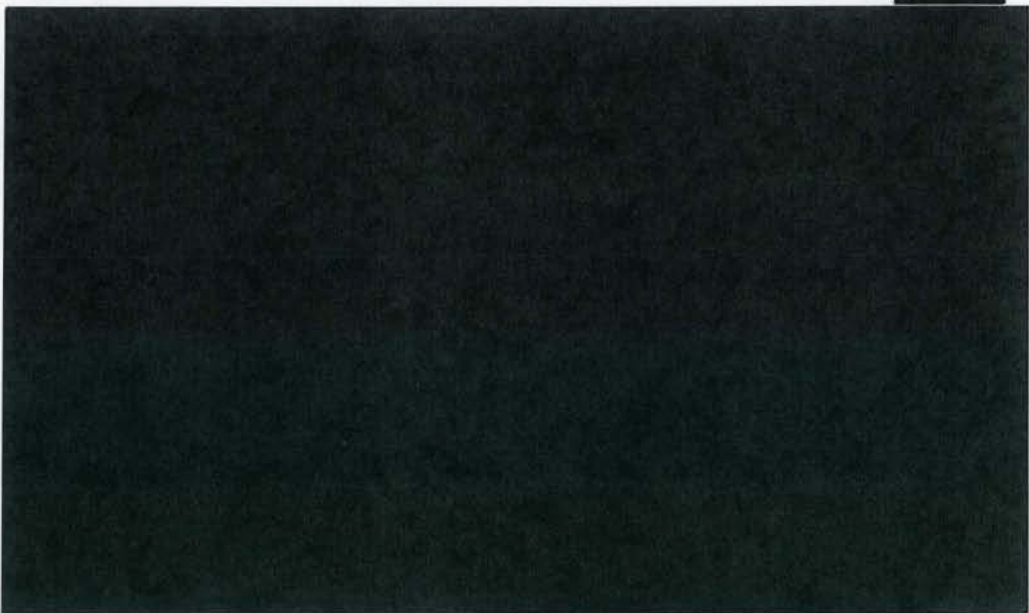
(c)   (TS//SI//NF) *Direct Contacts of Known Members of the Foreign Powers*. NSA has run continuous automated queries against the PR/TT metadata using the RAS-approved e-mail addresses on the Alert List as seeds. These automated queries return all of the direct (one-hop) and indirect (two-hop) contacts of each of the Alert List seeds. A direct contact of an Alert List seed could be deemed approved for PR/TT querying as a seed under either of the following processes:

(i) *Direct Contact of Alert List Seed;* █████████ *Tagged within the Station Table as Pending RAS-Approval*. Certain e-mail addresses residing on the Station Table would meet the RAS standard but for a missing link to one of the Foreign Powers. In other words, the information available to NSA may demonstrate that an e-mail address is used by an individual associated with terrorism, but the group with which the individual is affiliated is either not known or is a group that has not yet been linked to one of the Foreign Powers. These e-mail addresses carry certain tags in the Station Table ███████████████████████ █████████ each of these tags denotes that one of the Designated Approval Authorities has reviewed the information available, and has determined that RAS-approval is warranted as soon as a direct link to one of the Foreign Powers is found.[6] The automated query process looks at all of the direct contacts of the Alert List seeds to see if any of these specially-tagged, foreign e-mail addresses
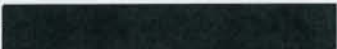
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[6] (TS//SI//NF) One other category of e-mail addresses on the Station Table would meet the RAS standard but for █ ███ although for this set of e-mail addresses, it is the Court that has found probable-cause to believe the addresses are linked to terrorism.

are in direct contact with one or more of the RAS-approved Alert List seeds.[7]

When the automated query process returns one of these e-mail addresses as a direct contact of an Alert List seed, that direct link to one of the Foreign Powers is established. The automated query tool marks the direct contact with a special tag on the Station Table (to denote its RAS approval through this process) and adds the e-mail address to the Alert List. Once added to the Alert List, these new RAS-approved e-mail addresses become seeds for the automated query process ███

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(ii) *Direct Contact of Alert List Seed;* ██████████████████

██████████ The automated query process also may ██████████████

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███

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[7] (TS//SI//NF) A separate field in the Station Table notes whether an e-mail address is reasonably believed to be used by a United States person.

[8] (TS//SI//NF) ██
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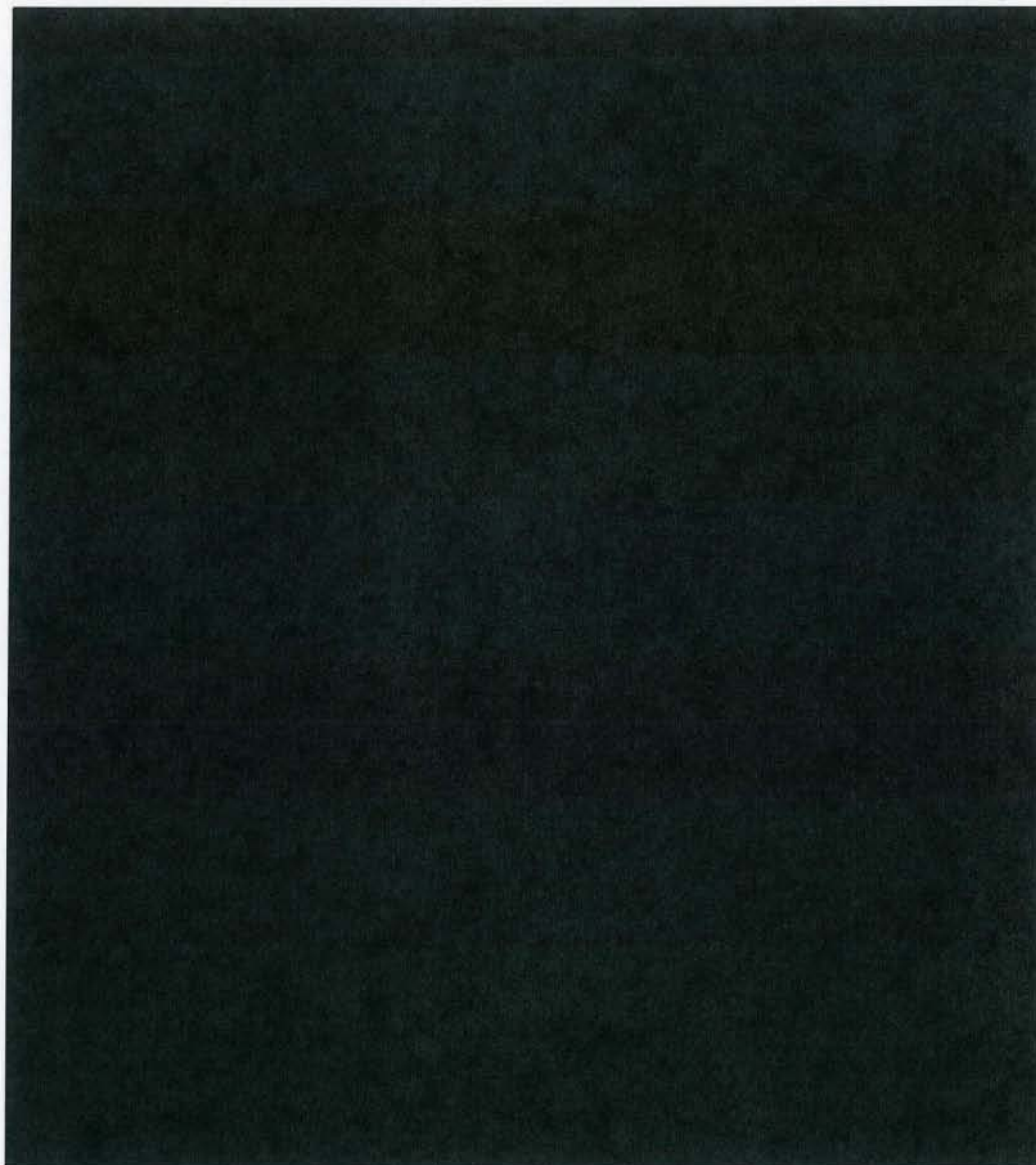
[9] (TS//SI//NF)

[10] (TS//SI//NF) In October 2006, NSA's Office of General Counsel issued formal guidance authorizing the RAS approval of a previously unknown e-mail address based on a direct contact with an approved seed if the evidence supporting the first seed demonstrated that it was more likely than not used by an agent of the Foreign Powers. NSA's Office of General Counsel advised use of this standard for the same reason NSA applied the special tag to the direct contact e-mail addresses approved pursuant to the automated process, *i.e.*, to protect against the potentially limitless RAS-approval of direct contacts with tenuous connections to the Foreign Powers.
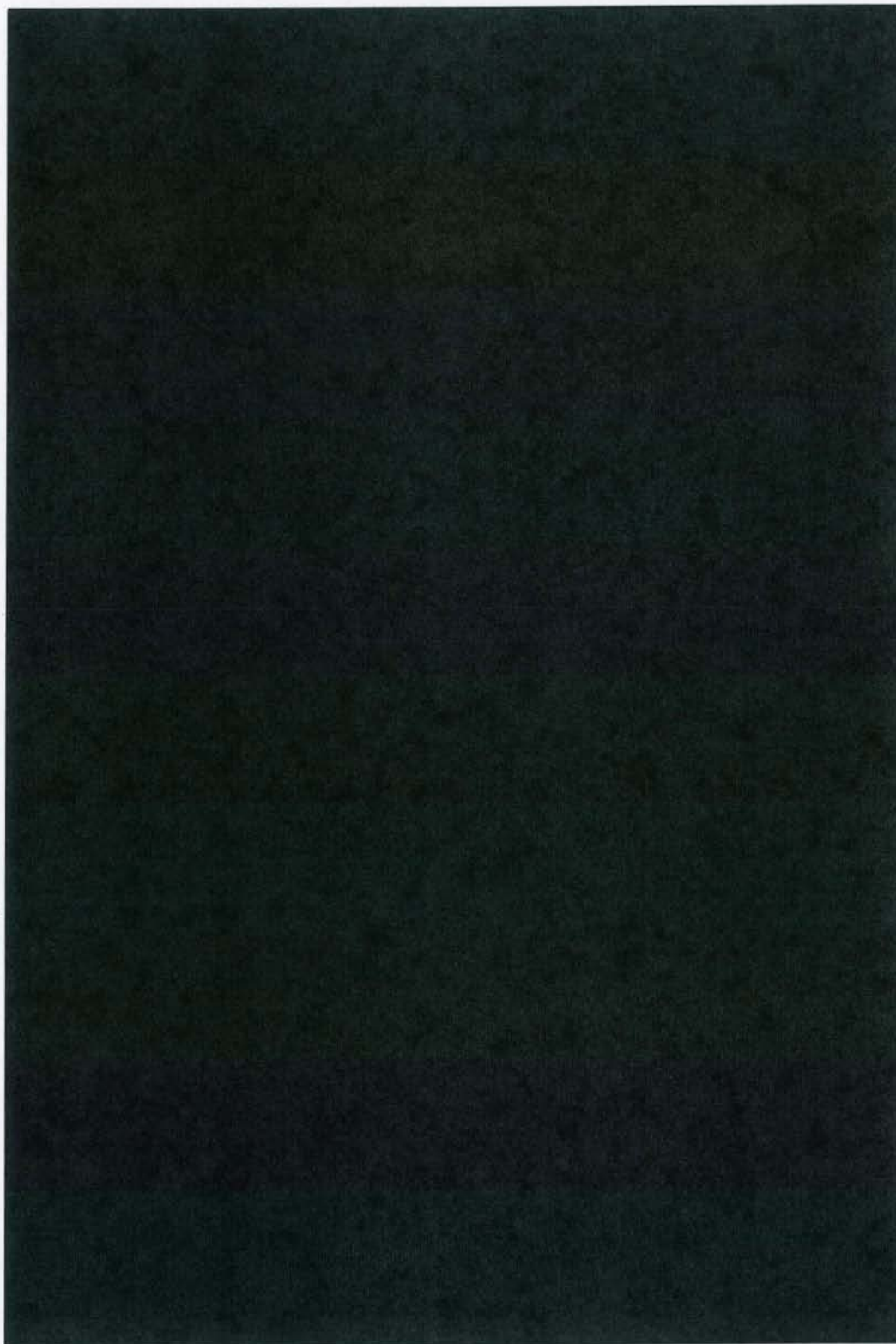
[REDACTED]

Although NSA believed that this temporary RAS-approval process was in compliance with the PR/TT Orders, and has reported it to the Court as described below, NSA has chosen to suspend this practice pending the Court's review.

III. (U) NSA's Reports to the Court Describing its Implementation of the Court's Orders:

(TS//SI//NF) NSA has submitted regular reports to the Court, describing the methods by which it queries the metadata since the PR/TT Order in Docket Number [REDACTED], dated [REDACTED] The first two reports NSA submitted to the Court in support of Docket Number PR/TT [REDACTED] (dated [REDACTED]) described two methods by which NSA queried the metadata. The first method was the automated query process. The second method was through direct submissions of proposed seeds. The description of the automated query process focused on the continuous, automated queries of the metadata seeded with each of the e-mail addresses validated as having met the RAS standard – the set of seeds that became known as the Alert List:

(TS//SI//NF) Once the Court issued its order, a process was instituted, and continues today, [REDACTED]

PR/TT Docket Number ███, Report dated ████████ at p. 11; *see also* PR/TT Docket Number ███, Report dated ████████ at p. 6 (noting that the automated query process sought ████████████████████████). This description did not specify how NSA ████████████████████████

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██
██
██

(TS//SI//NF) Once an e-mail address has been approved as meeting the Court's standard for use as a seed address to query the data, that address is added to the list of e-mail addresses known or suspected to be used by members of ████████████████ ███████ NSA has compiled. ████████████████

PR/TT Docket Number ███, Report dated ████████ at p. 11; *see also* PR/TT Docket Number ███, Report dated ████████ at p. 6.

(TS//SI//NF) In the third report NSA submitted to the Court in support of Docket Number PR/TT ███ (dated ████████) NSA began to refer to the list of RAS-approved e-mail addresses used to seed the automated query process as the Alert List. In this report, NSA retained the descriptions of the automated query process and the direct submissions of proposed seeds, but added one more querying method, triggered by the alerts generated by the automated query process:

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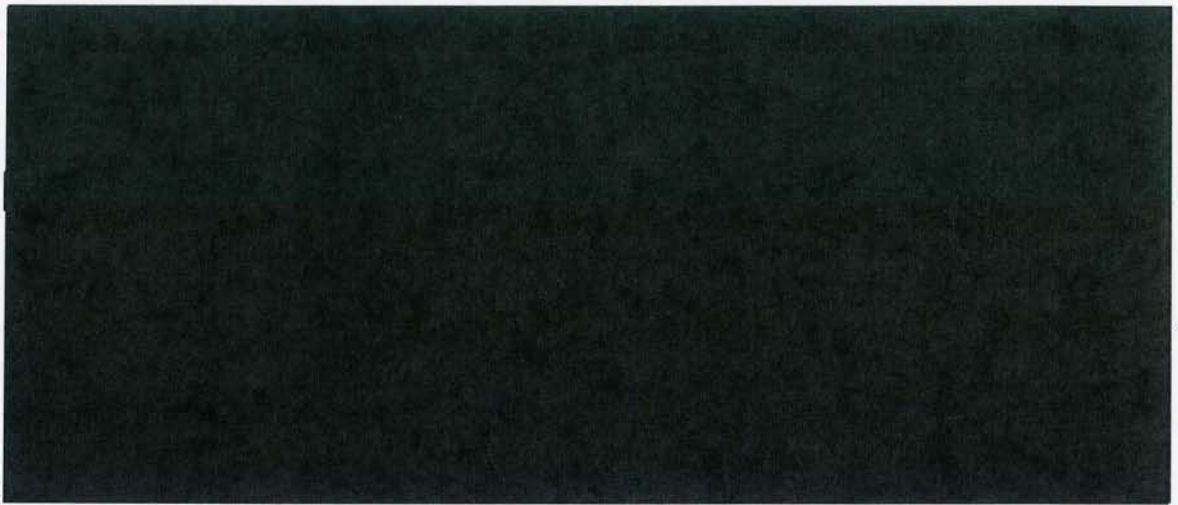
PR/TT Docket Number █████, Report dated ████████ at pp. 6-7 (emphasis added). This report did not note explicitly that this newly-described method automated the RAS-approval process for new e-mail addresses identified as direct contacts of RAS-approved seeds. But it did explain in detail that NSA analysts could execute two-hop queries not only from an Alert List seed, but also from a direct contact of an Alert List seed.

(TS//SI//NF) This third Report also elaborated on the method by which NSA recorded the numbers of queries made against the metadata:

PR/TT Docket Number ████ Application, Attachment B (Report), pp. 10-11 (emphasis added). This description, particularly the underlined phrase, prompted the Court to add a handwritten reporting requirement to the Order:

These reports shall explain in detail what is meant by queries made ███████████

(attachment B, p. 11) [PR/TT Docket Number ████ Application, ████████ and how such queries fall within the authorization of this order.

PR/TT Docket Number ████ Order at p. 11.

(TS//SI//NF) In response to this additional reporting requirement, NSA added the

following description to each of the three Reports submitted under PR/TT ████ (dated ████████

█████████████████████):

(TS//SI//NF) As discussed above. ██████████████████████

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██ Thus, in accordance with the Court's authorization, the analyst may cause the contact chaining tool to identify "accounts that have been in contact with an account within the first tier of accounts that had direct contact with the seed account." In other words, the analyst takes a seed address and causes the contact chaining tool to link it to direct contacts (first tier) and then contacts of the first tier or what NSA analysts call a second hop or second level of contact. (i.e. accounts that have been in contact with an account within the first tier of accounts). Analysts are authorized to take these steps though in practice they rarely will exercise the full authority. No further contact chaining may be conducted absent at least Counter Terrorism Advanced Analysis Shift Coordinator, and in appropriate cases, NSA OGC approval 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 that a particular known e-mail address is associated with ██████

PR/TT Report, dated ████████████, pp. 20-21 (footnotes omitted) (emphasis added). This description explicitly noted that a U.S.-based e-mail address in direct contact with an approved seed may be "deemed approved for contact chaining purposes" based on the guidance provided by NSA's Office of General Counsel. Although this description did not call out the absence of individual review for First Amendment considerations, the phrase "deemed approved for contact chaining purposes" was intended to convey that such approval would occur without individual review.

(TS//SI//NF) On ████████ the Court considered NSA's PR/TT renewal application in Docket Number ████████ Neither the application, the declaration, nor the proposed order incorporated the handwritten reporting requirement from the previous order. In approving the proposed order, the Court did not require the inclusion of the same requirement that had been the handwritten addition to the previous order. NSA removed the description of the "deemed approval" process for direct contact proposed seeds from subsequent reports to the Court.

IV. (U) Audit in Response to ████████████ Order

(TS//SI//NF) I have directed that NSA complete ongoing end-to-end system engineering and process reviews (technical and operational) of NSA's handling of PR/TT metadata to ensure that the material is handled in strict compliance with the terms of the PR/TT Orders and the NSA's descriptions to the Court. As part of this review process, NSA has initiated a complete audit of PR/TT analyst queries entered between ████████████ and ████████████ This audit is not yet complete. NSA is also examining the technical architecture to ensure that NSA's technical infrastructure has not allowed and will not allow e-mail addresses that have not been RAS-approved to be used as seeds with which to conduct contact chaining ████████████
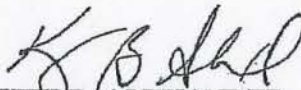
within the PR/TT metadata. NSA will report to the Department of Justice and the Court if either

the audit or examination of the technical architecture reveals any incidents of improper querying

of the PR/TT metadata. .

(U) I declare under penalty of perjury that the facts set forth above are true and correct.

VR

KEITH B. ALEXANDER
Lieutenant General, U.S. Army
Director, National Security Agency

Executed this ██████████████████