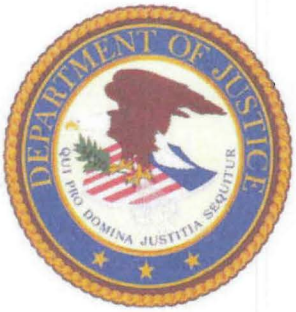


JOINT STATEMENT OF

LISA O. MONACO
ASSISTANT ATTORNEY GENERAL
FOR NATIONAL SECURITY
U.S. DEPARTMENT OF JUSTICE

JOHN C. (CHRIS) INGLIS
DEPUTY DIRECTOR
NATIONAL SECURITY AGENCY

ROBERT S. LITT
GENERAL COUNSEL
OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE

BEFORE THE
SENATE SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AT A HEARING CONCERNING
"FISA AMENDMENTS ACT REAUTHORIZATION"

PRESENTED ON
FEBRUARY 9, 2012

[redacted]

Joint Statement of

Lisa O. Monaco
Assistant Attorney General
for National Security
U.S. Department of Justice

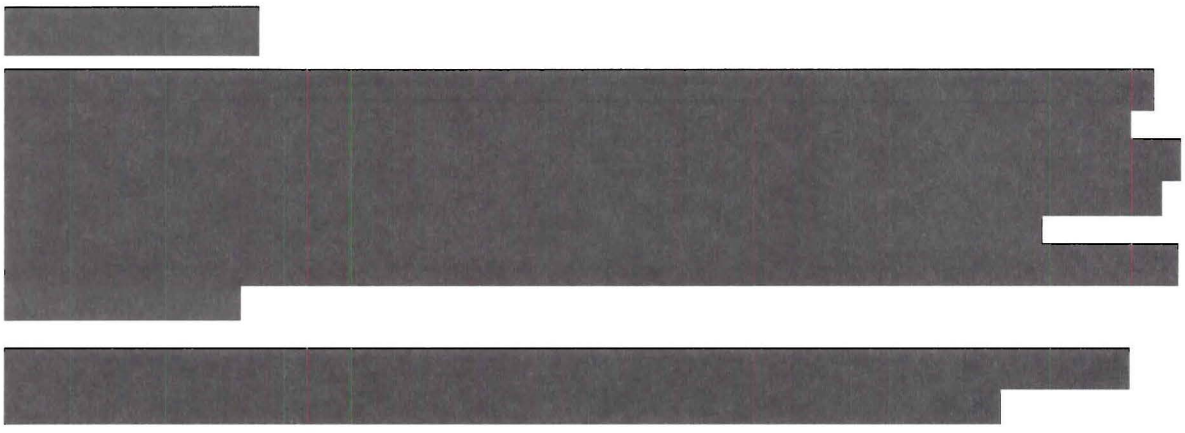
John C. (Chris) Inglis
Deputy Director
National Security Agency

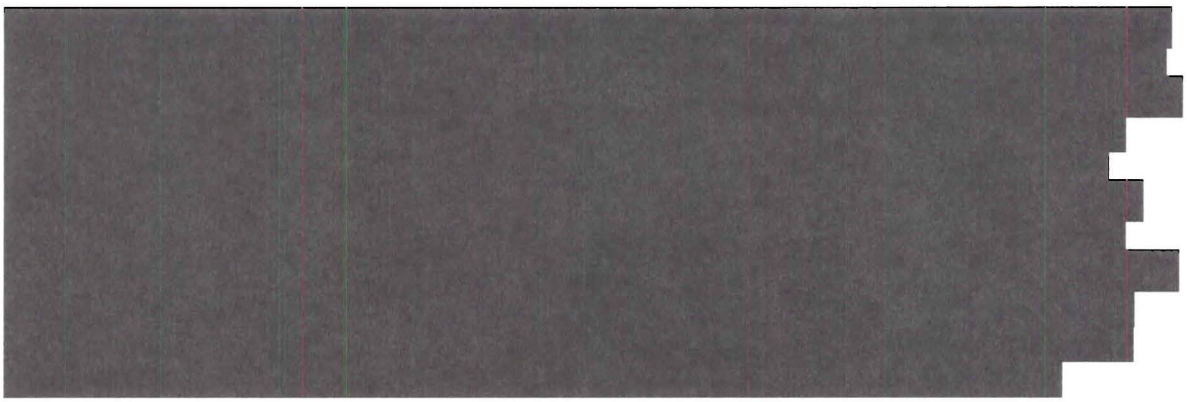
Robert S. Litt
General Counsel
Office of Director of National Intelligence

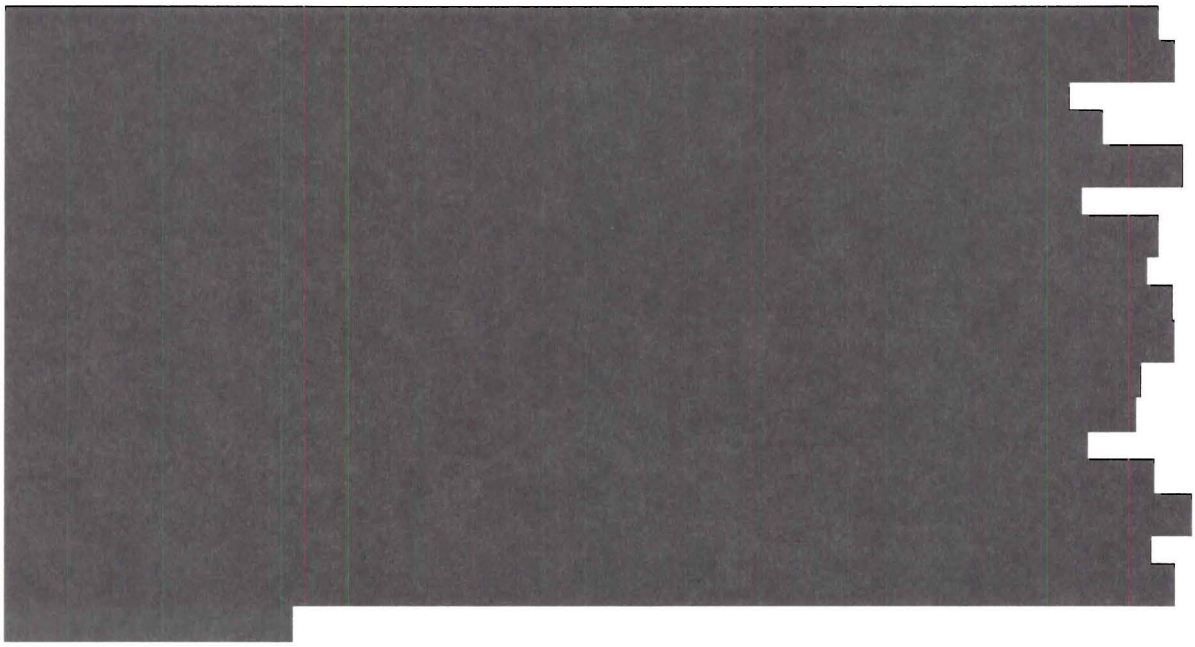
Before the
Senate Select Committee on Intelligence
United States Senate

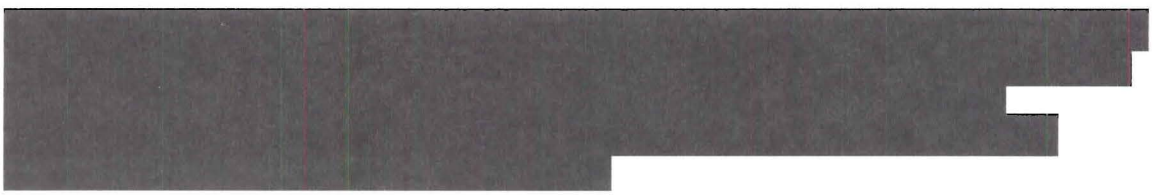
At a Hearing Concerning
"FISA Amendments Act Reauthorization"

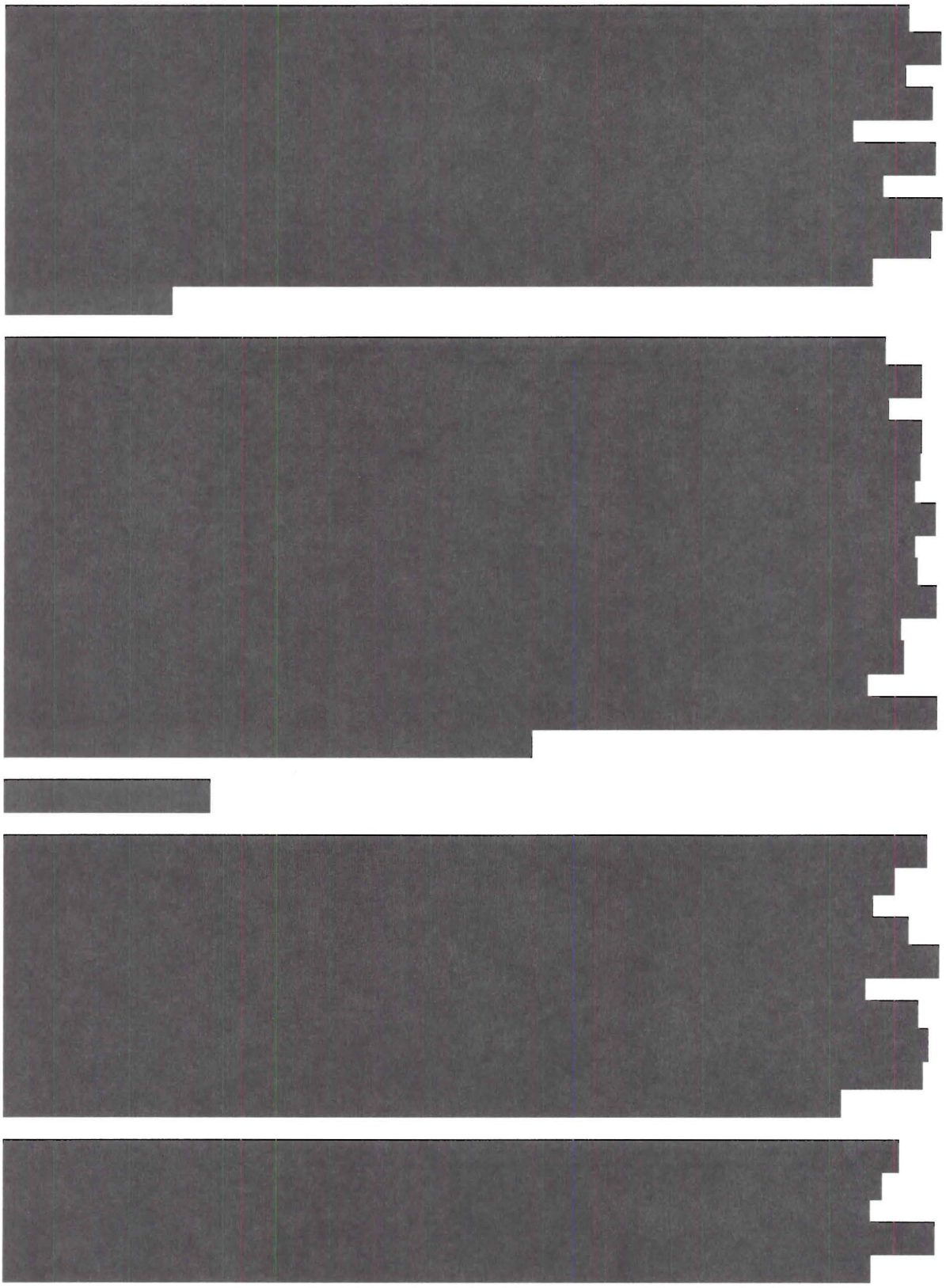
Presented on
February 9, 2012

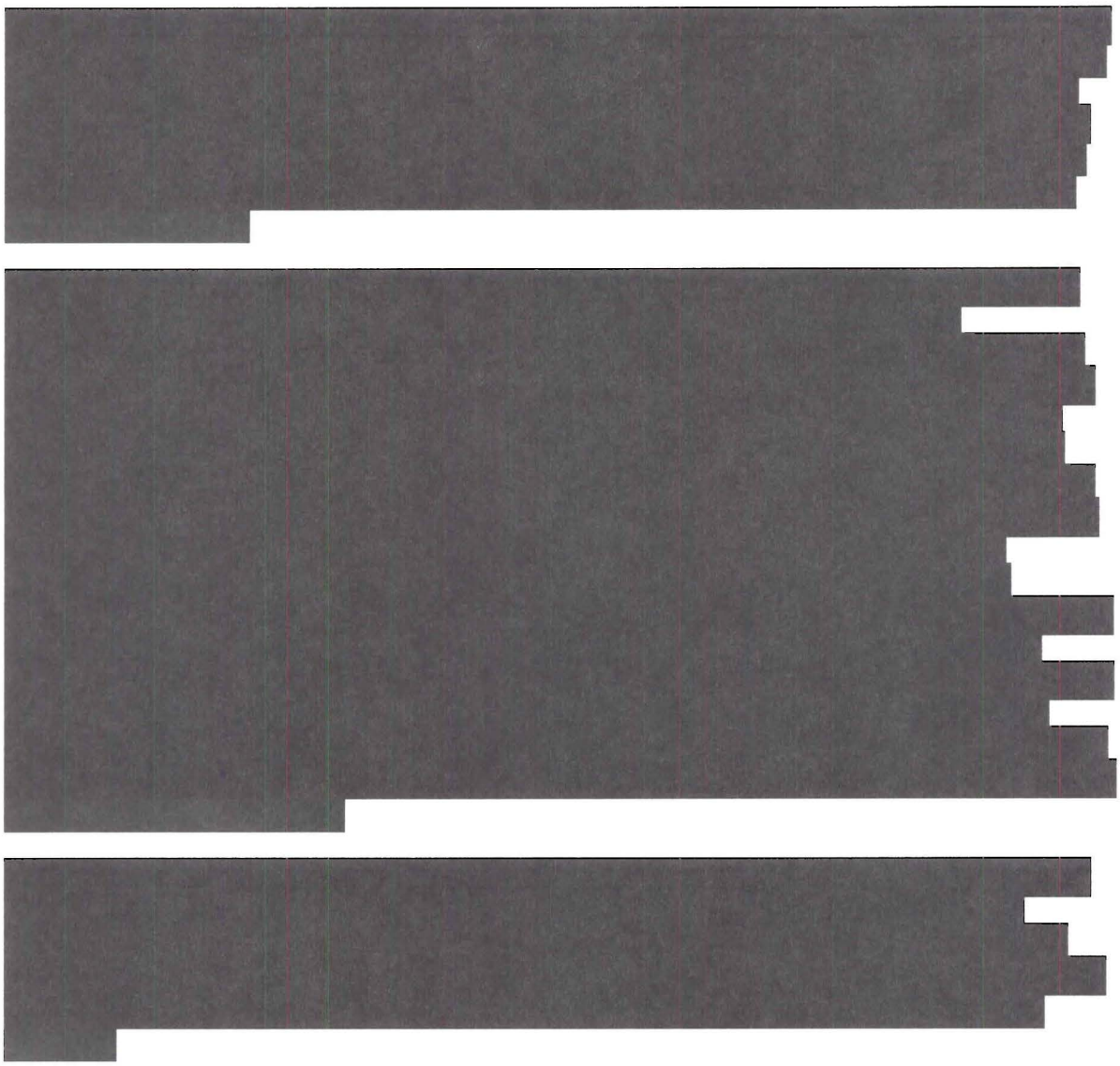






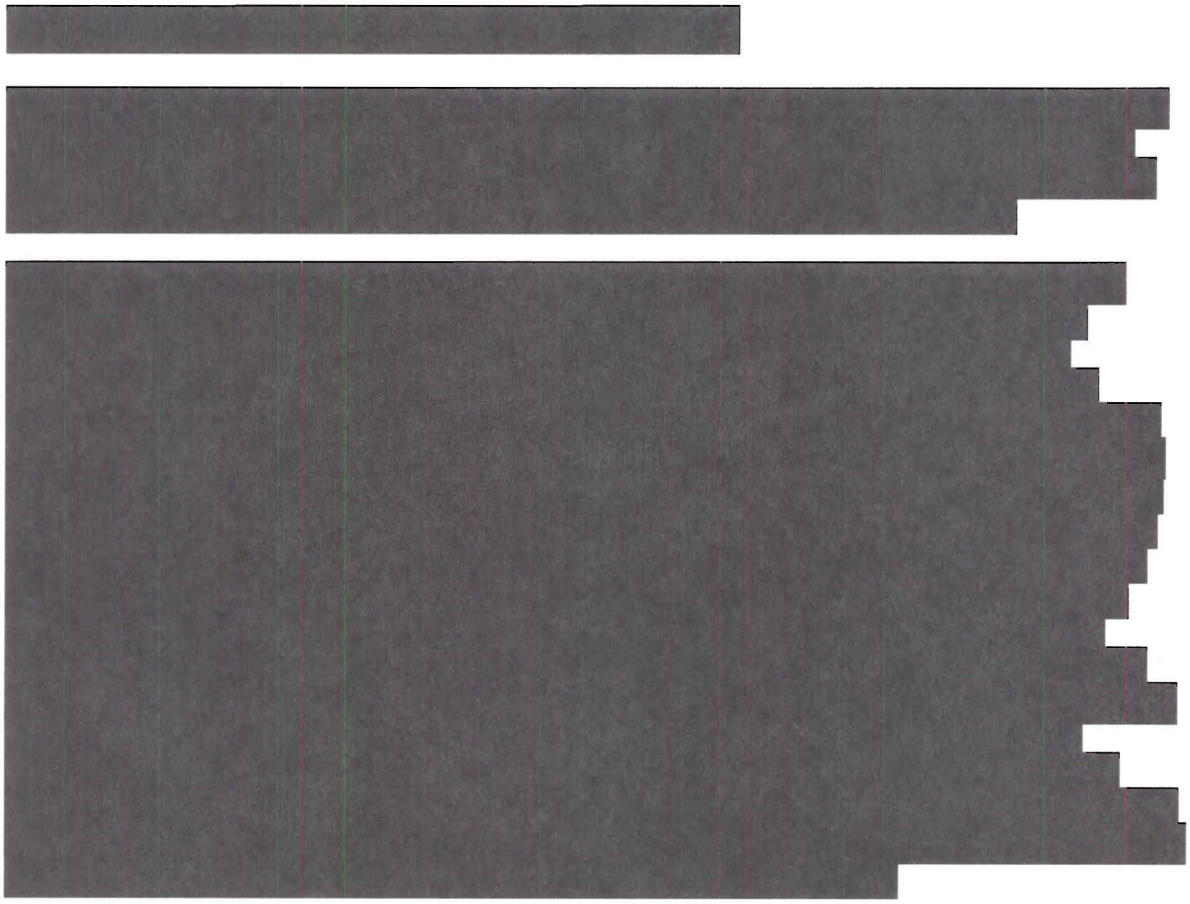
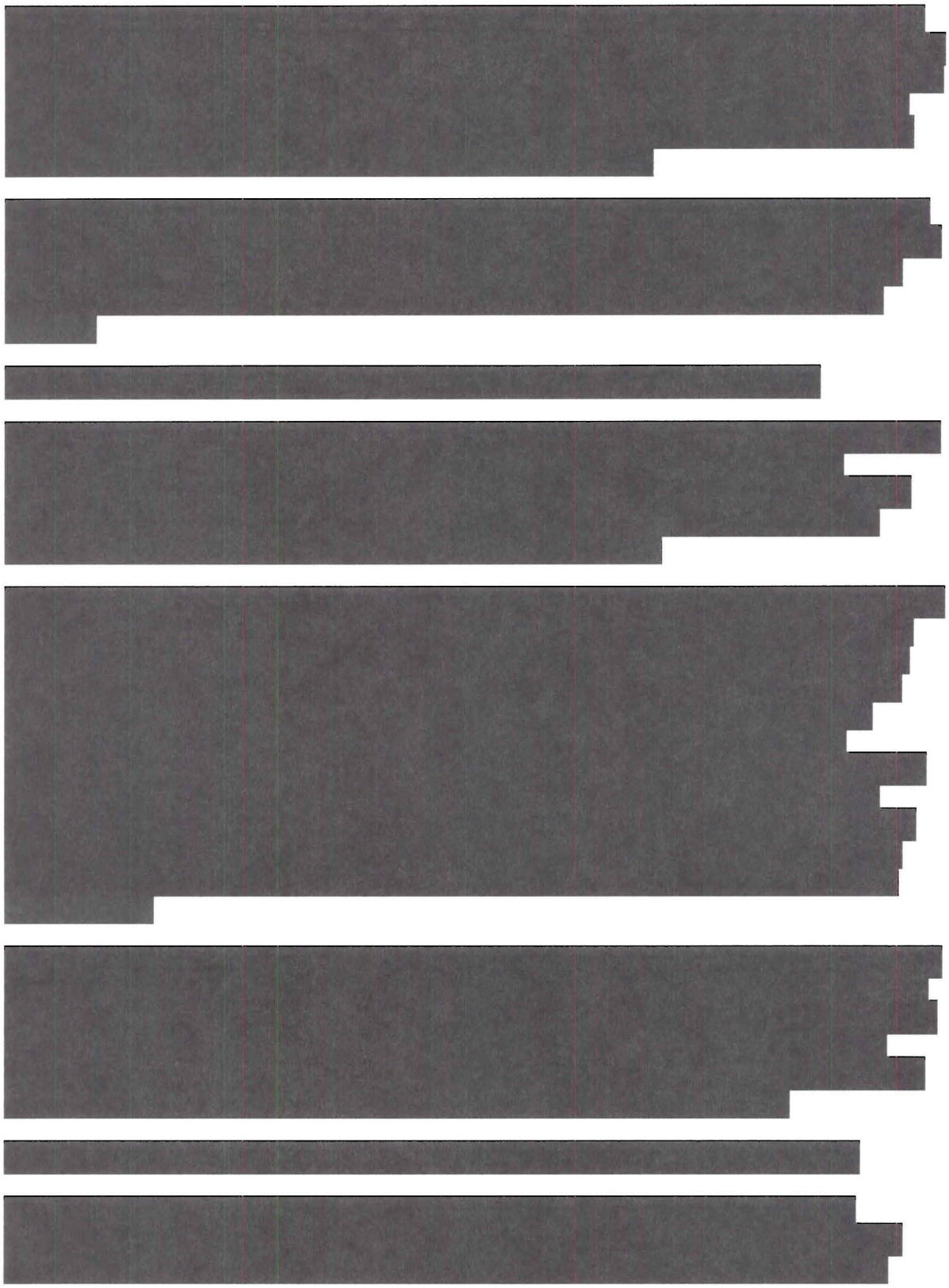
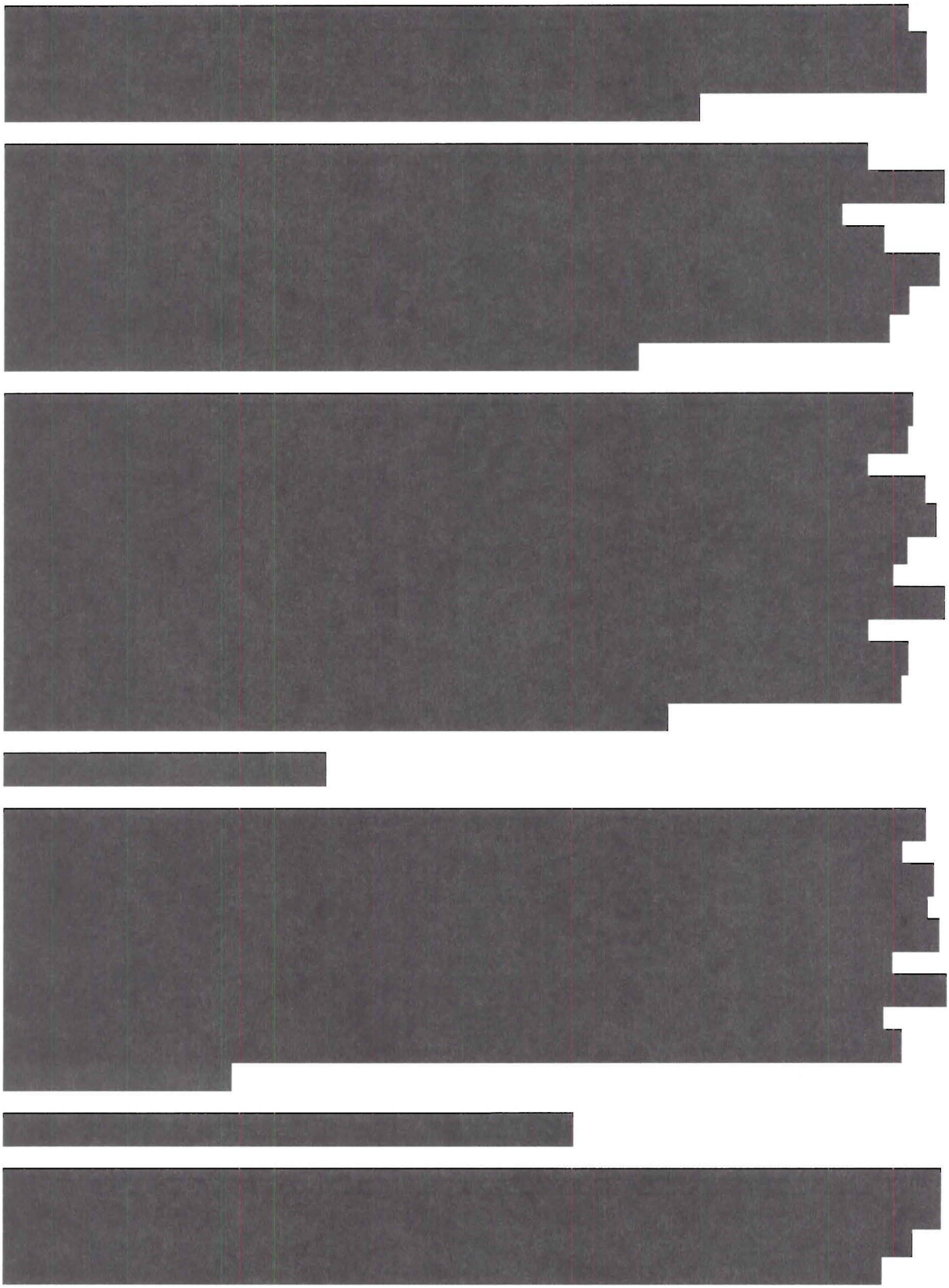
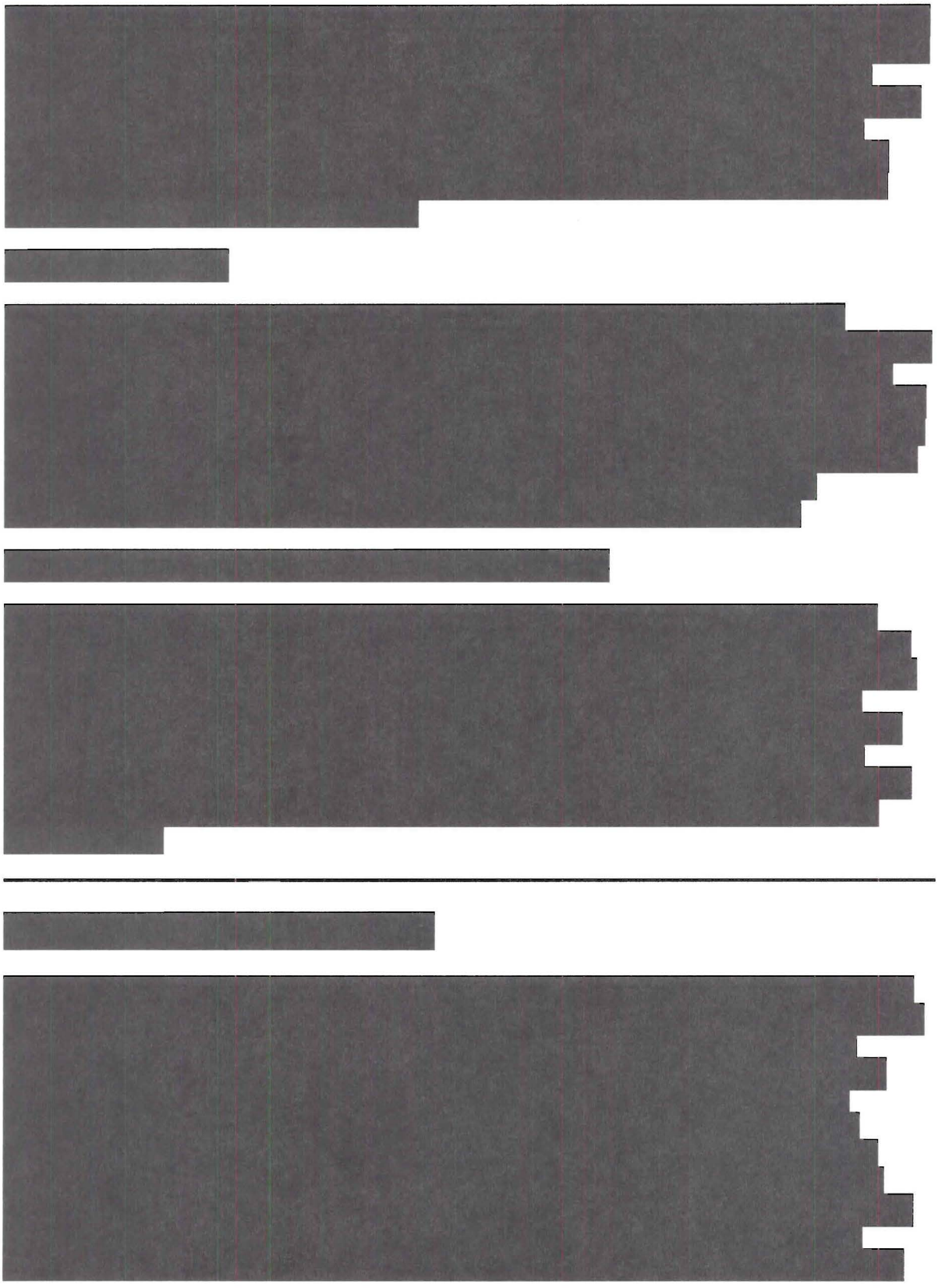
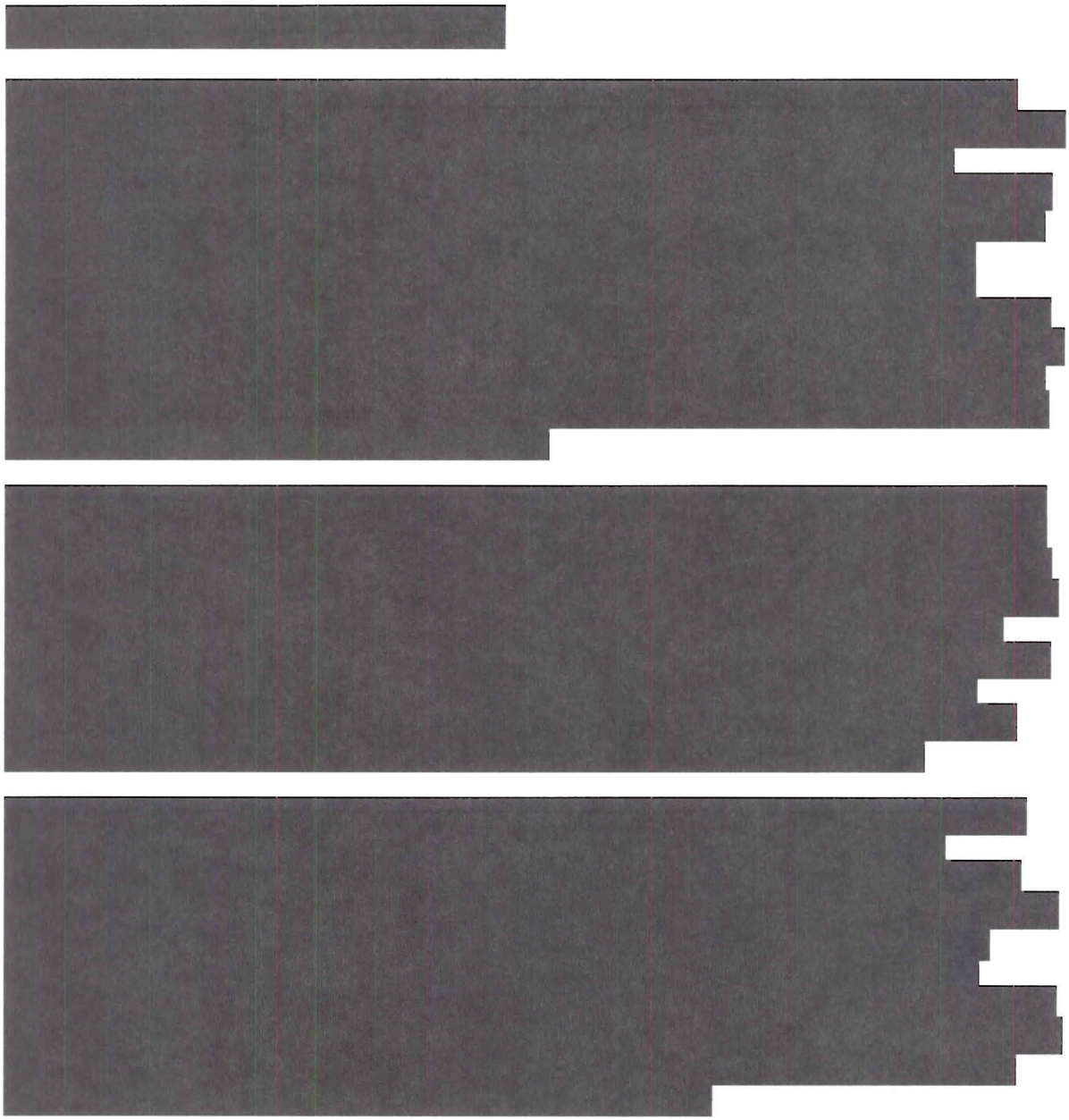






(U) **Recent FISC Opinion**

~~(TS//SI//NF)~~ On October 20, 2011, the Director of NSA and the Assistant Attorney General for National Security testified before this Committee about an October 3, 2011 opinion of the FISC addressing the Government's submission of replacement certifications under section 702. *In re DNI/AG Certification 2009-C, et. al.*, Docket Nos. [redacted] Mem. Op. As the Committee is aware, the FISC denied in part the Government's requests for replacement certifications because of its concerns about the rules governing the retention of certain non-targeted Internet communications -- so called multi-communication transactions or MCTs -- acquired through NSA's upstream collection under section 702. The FISC recognized, however, that the Government may be able to "tailor the scope of NSA's upstream collection, or adopt more stringent post-acquisition safeguards" in a manner that would satisfy its concerns, and suggested a number of possibilities as to how this might be done. *Id.* at 61-63, 78-80.

~~(TS//SI//NF)~~ On October 31, 2011, after extensive consultations among the Department, ODNI, and NSA, the Attorney General and the DNI submitted amended minimization procedures to the FISC addressing the deficiencies noted by the court. These amended procedures continue to allow for the upstream collection of MCTs; however, they also create more rigorous rules governing the retention of MCTs as well as NSA analysts' exposure to, and use of, non-targeted communications. On balance, NSA believes that the impact of these procedures on operations is acceptable as a necessary requirement in order to continue upstream collection, and that these procedures will allow for continued useful intelligence collection and analysis. On November 30, the FISC granted the Government's request for approval of the amended procedures, stating that, with regard to information acquired pursuant to the 2011 certifications, "the government has adequately corrected the deficiencies identified in the October 3 Opinion," and that the amended procedures, when "viewed as a whole, meet the applicable statutory and constitutional requirements."

(U) The Committee has been provided with copies of the opinions and the filings by the Government in this matter, and we will continue to inform the Committee about any additional developments on this issue.