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b(6) and b(7)(C)

CLERK

UNITED STATES

2007

FOREIGN INTELLIGENCE SURVEILLANCE COURT

U.S. Foreign Intelligence
Surveillance Court

WASHINGTON, D. C.

IN RE [REDACTED]

:

b(7)(E)

: Docket Number: [REDACTED]

:

[REDACTED] (S):

ORDER

The United States of America has applied, pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. §§ 1801-1811 (“FISA” or “the Act”), for an order for electronic surveillance to target for collection communications for which there is probable cause to believe: (1) that one of the communicants is a member or agent of [REDACTED]

[REDACTED]
[REDACTED] and (2) that the communication is to or from a foreign country.

The Court has given full consideration to the matters set forth in the Government’s application and finds as follows:

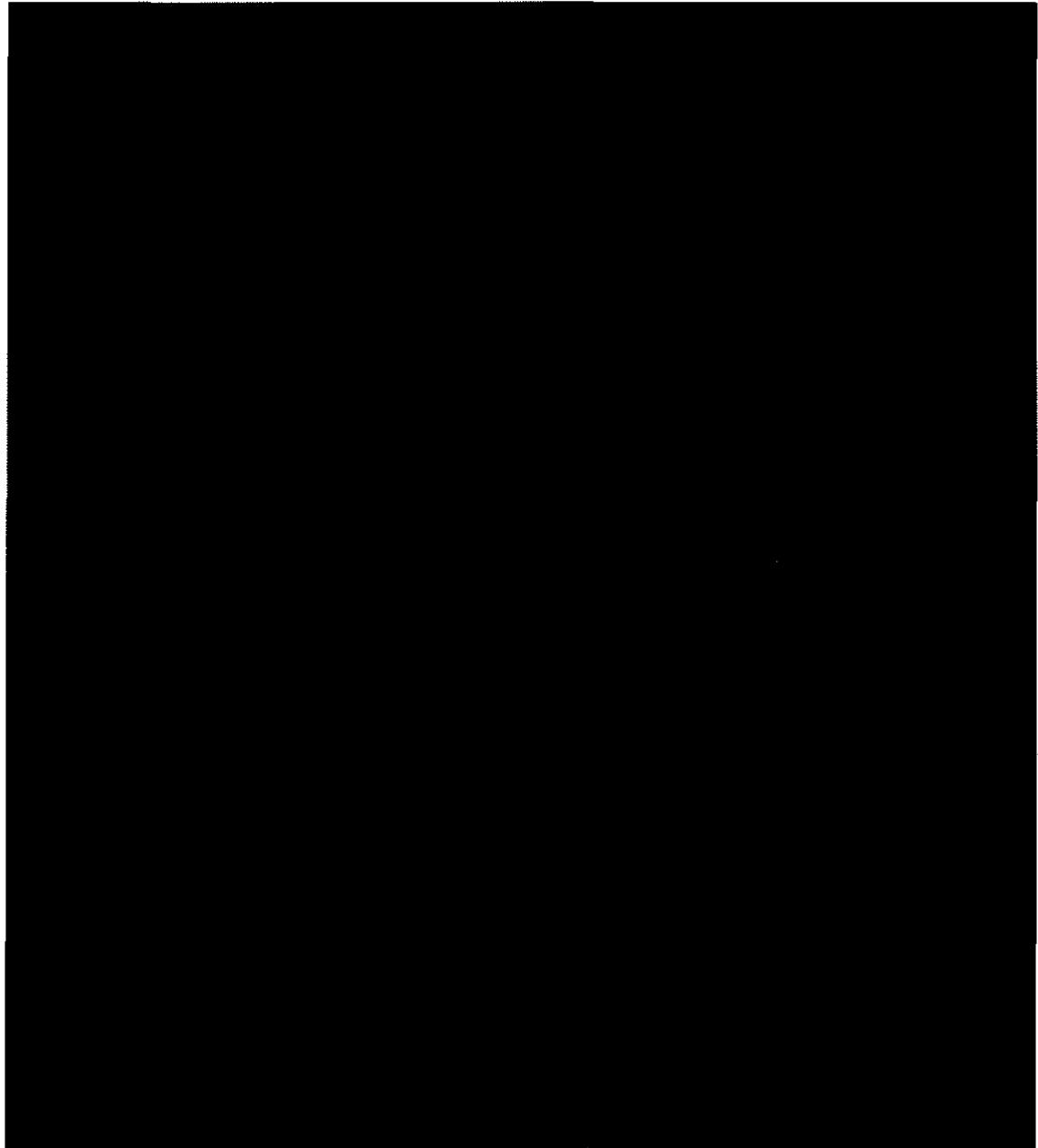
1. The President has authorized the Attorney General of the United States to approve applications for electronic surveillance for foreign intelligence information [50 U.S.C. § 1805(a)(1)];
2. The application has been made by a Federal officer and approved by the Attorney General [50 U.S.C. § 1805(a)(2)];

Derived from: Application to the USFISC in [REDACTED]

b(7)(E)

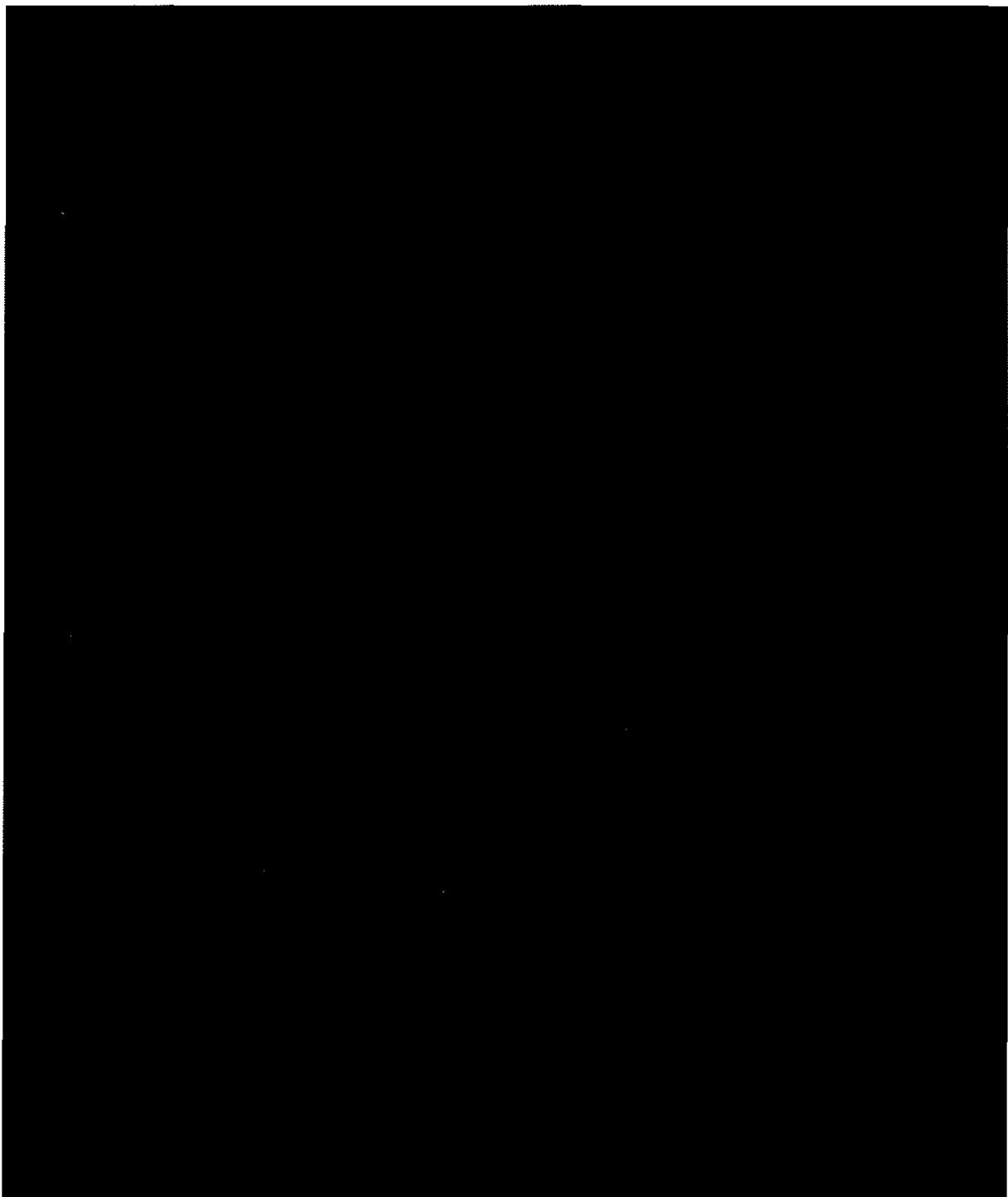
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3. On the basis of the facts submitted by the applicant, there is probable cause to believe
that [50 U.S.C. § 1805(a)(3)]:


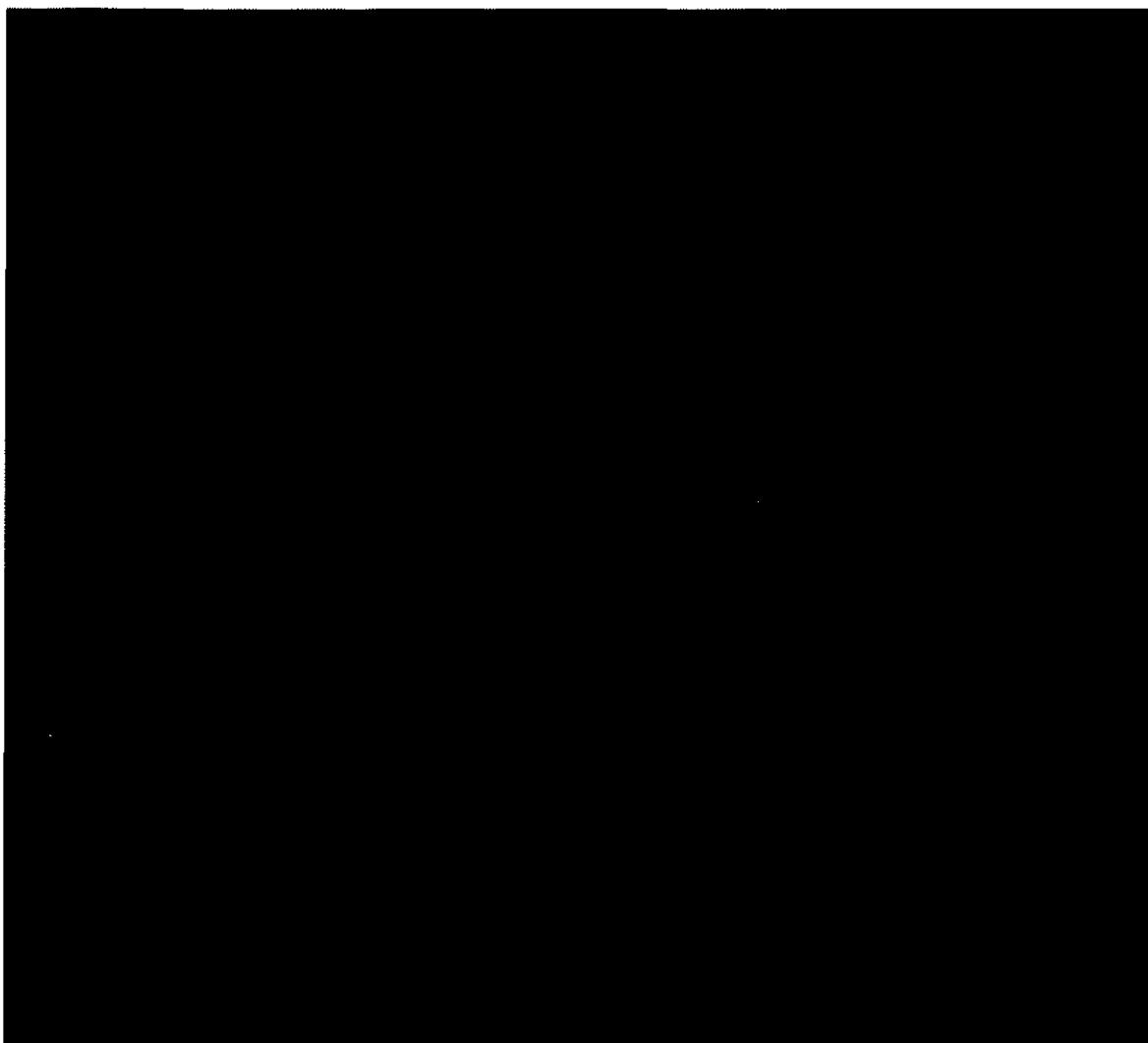
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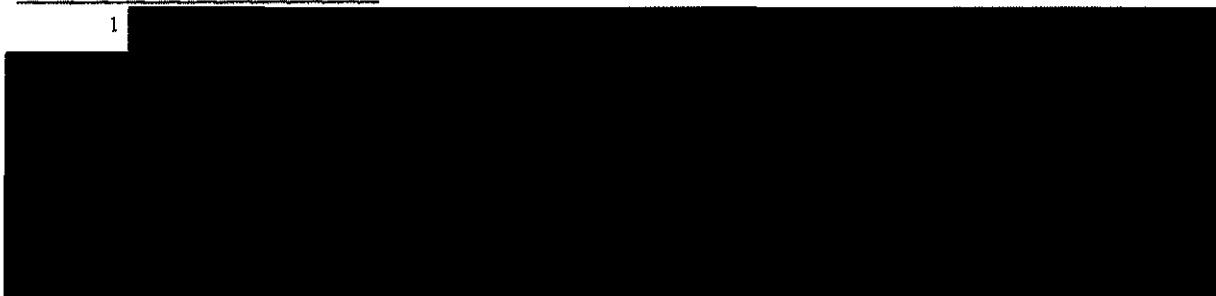


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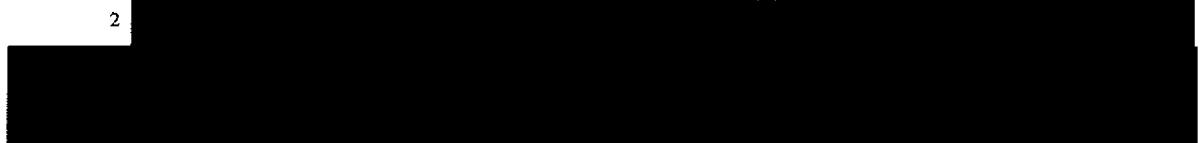
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(c) each of the facilities [REDACTED]³ at

which the electronic surveillance is directed, is being used or is about to be used by these foreign powers, and electronic surveillance is authorized, using for each particular facility only such means as are identified in Exhibit C to the application [50 U.S.C.

§ 1805(a)(3)(B)];

4. The minimization procedures proposed in the application have been adopted by the Attorney General and, as modified herein, meet the definition of minimization procedures under 50 U.S.C. § 1801(h). [50 U.S.C. § 1805(a)(4)]; and

5. The application contains all statements and certifications required by 50 U.S.C. § 1804, and the certification is not clearly erroneous on the basis of the statements made under 50 U.S.C. § 1804(a)(7)(E), and any other information furnished under 50 U.S.C. § 1804(d). [50 U.S.C. § 1805(a)(5)].

[REDACTED]

³ [REDACTED]

[REDACTED]

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WHEREFORE, IT IS HEREBY ORDERED, pursuant to the authority conferred on this Court by the Act, that the application of the United States to conduct electronic surveillance, as described in the application, is GRANTED as modified herein, and it is

FURTHER ORDERED, as follows [50 U.S.C. § 1805(c)-(e)]:

(1) The United States is authorized to conduct electronic surveillance to acquire foreign intelligence information as defined by 50 U.S.C. § 1801(e)(1)(A) and (B), including the incidental acquisition of other foreign intelligence information as defined by 50 U.S.C. § 1801(e)(1)(C) and (2), at the facilities or places described in paragraph 3(c) above, subject to the minimization procedures specified in paragraph 4 above, including the application of the “minimization probable cause standard” specified below, for a period of ninety days, unless otherwise ordered by the Court, as follows:



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[REDACTED] NSA shall collect only communications that meet the minimization probable cause standard. In addition, with respect to communications that meet the minimization probable cause standard, the NSA [REDACTED]

[REDACTED] NSA shall collect only communications that meet the minimization probable cause standard. In addition, with respect to communications that meet the minimization probable cause standard, the NSA [REDACTED]

⁵ Although the NSA surveillance will be designed to acquire only international communications where one communicant is outside the United States, the Court understands that the communications infrastructure and the manner in which it routes communications do not

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permit complete assurance that this will be the case. In such cases, NSA shall apply its standard FISA minimization procedures, as described and modified herein, to any domestic communications it may inadvertently acquire.

⁶ The Court understands that the system will select for delivery to NSA not only international Internet communications to and from agents or members of [REDACTED]

[REDACTED] but also Internet communications in which e-mail addresses [REDACTED] of such agents or members are mentioned in the Internet communication.

7 [REDACTED]

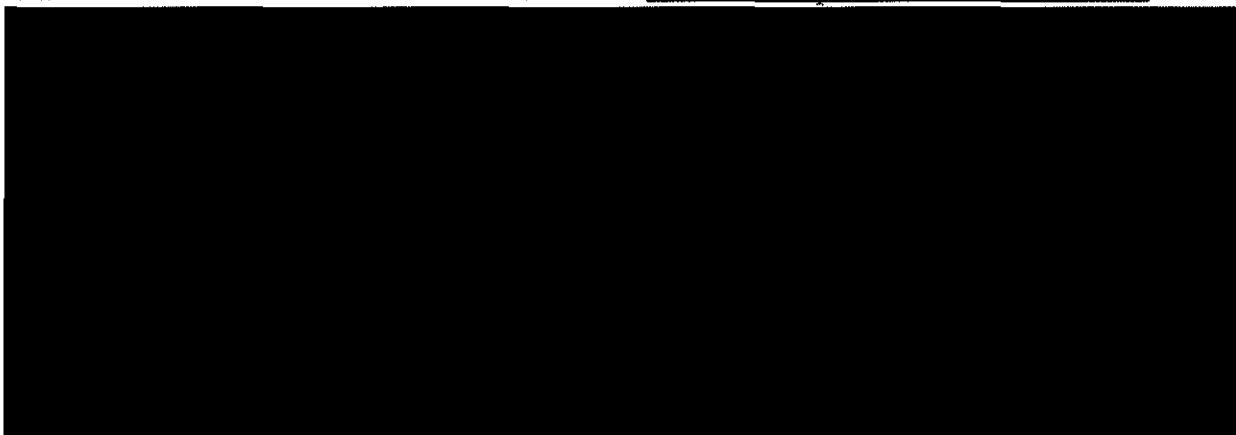
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⁹ The Court understands that "selectors" as used herein to discuss the collection of Internet communications refers to e-mail addresses.



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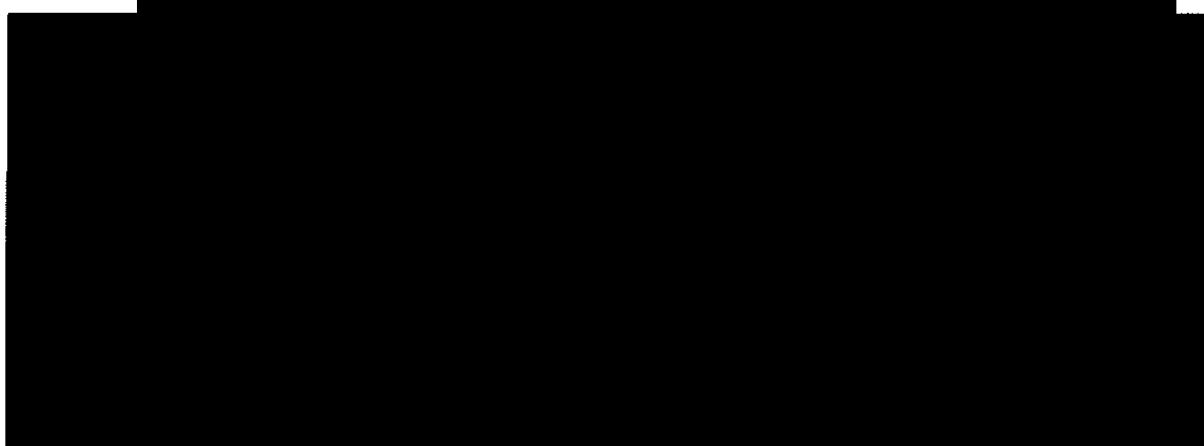


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NSA

shall handle non-target communications acquired as a result of this technical limitation in accordance with its standard FISA minimization procedures, as modified herein.

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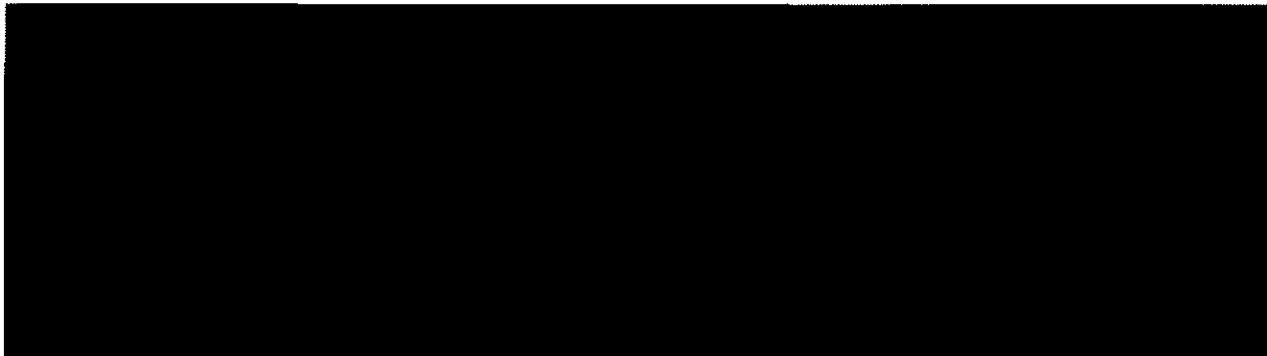
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Unconsented physical entry is not authorized to implement the electronic surveillance approved herein.

(2) The person(s) specified in the secondary orders attached hereto, specifically:



including all assigns and/or other successors in interest to said specified persons with regard to the facilities and/or places targeted herein, shall:

(a) furnish the United States all information, facilities, and/or technical assistance necessary to effect the authorities granted herein in accordance with the orders of this Court directed to said specified person; and

(b) maintain all records concerning this matter, or the aid furnished to the United States, under the security procedures approved by the Attorney General and the Director of Central Intelligence (or the Director of National Intelligence) that have previously been or will be furnished to the specified persons and are on file with this Court,

and the United States shall compensate any such person(s) providing assistance at the prevailing rate for all assistance furnished in connection with the activities described herein [50 U.S.C. §§ 1805(c)(2)(B)-(D)].

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(3) As to all information gathered through the authorities requested herein, the NSA shall follow the minimization probable cause procedure set forth below:

Minimization Probable Cause Standard. NSA shall apply two criteria in selecting communications to target for collection, both of which shall apply in each instance. First, NSA shall compile and update a list of telephone numbers and e-mail addresses (together, "selectors") for which it has determined, based on the totality of circumstances, there is probable cause to believe that the particular selector is used by [REDACTED]

[REDACTED]

Second, NSA shall acquire only communications for which there is probable cause to believe that at least one of the communicants is outside the United States. Together, these two criteria constitute the "minimization probable cause standard."

Use of Foreign Selectors. All selectors shall be telephone numbers or e-mail addresses that NSA reasonably believes are being used by persons outside the United States.¹²

¹² The Court understands that a selector that NSA reasonably believes is being used outside the United States may on occasion be used in the United States. If NSA discovers that it has acquired communications from a selector while that selector was being used inside the United States, NSA shall handle any such inadvertently acquired communications as provided in the minimization procedures described in this Order.

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NSA Process for Determining that the Minimization Probable Cause Standard Has

Been Met. All telephone numbers and e-mail addresses NSA analysts seek to use as a basis for acquiring communications [REDACTED]

[REDACTED] to the application shall be entered into a database that will show the telephone number or e-mail address the analyst has probable cause to believe is used by a member or agent of [REDACTED]

[REDACTED] and a statement of the reasons for such a belief. [REDACTED] as

described in Exhibit C to the application. The proposed number or e-mail address and supporting documentation shall be reviewed by officials from the [REDACTED]

[REDACTED] Branch within NSA.¹³ Prior to initiating acquisition of communications to or from a telephone number or to, from, or concerning an e-mail address [REDACTED] NSA officials from the [REDACTED]
[REDACTED] Branch shall confirm that documentation regarding the first prong of the minimization probable cause standard is present in the file. If the reviewing officials find that the standard has not been documented appropriately, the telephone

¹³ The Court understands that NSA is considering assigning this duty to another NSA component. If such a change in the assignment of this duty occurs and if different officials will determine whether proper documentation exists to support the determination that specific telephone numbers, e-mail addresses [REDACTED] meet the minimization probable cause standard, the Government shall inform the Court in the next application for a renewal of the Court's authorization.

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number or e-mail address will remain in the database, but shall be ineligible for tasking and will be designated as such.

Additional Oversight. The NSA shall apply the following additional oversight. The NSA's Inspector General (IG), General Counsel (GC), and the Signals Intelligence Directorate's Office of Oversight and Compliance shall each periodically review this program to ensure it is being carried out lawfully, and shall submit an initial report to the Director of NSA sixty (60) days after the initiation of collection to assess the adequacy of the management controls and to assure that the processing and dissemination of U.S. person information is being accomplished in accordance with the minimization procedures specified herein.

Review by the Department of Justice and Reporting to this Court:

- (i) An attorney from the National Security Division at the Department of Justice shall review the NSA's justifications for targeting selectors.
- (ii) The Government shall submit a report to the Court every thirty (30) days listing new selectors that the NSA has tasked during the previous thirty days and briefly summarizing the basis for the NSA's determination that the first prong of the minimization probable cause standard has been met for each new selector.
- (iii) At any time, if the Court finds that there is not probable cause to believe that any particular selector is used by a member or agent of [REDACTED]

[REDACTED] the

Court may direct that surveillance under this Order shall cease on that selector

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expeditiously. The Court may also direct that any communications acquired using that particular selector shall be segregated and/or disposed of in a manner approved by the Court.

(4) In addition to the minimization probable cause standard set forth above, as to all information gathered through the authorities requested herein, NSA shall follow:

(a) The Standard Minimization Procedures for Electronic Surveillance Conducted by the National Security Agency (also known as Annex A to United States Signals Intelligence Directive 18), which have been adopted by the Attorney General and are on file with this Court;

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. The following shall be added to the end of Section 3(f) of these standard NSA FISA procedures:

(7) The National Security Division of the Department of Justice shall periodically determine that information concerning communications of or concerning United States persons that is retained meets the requirements of these procedures and the Foreign Intelligence Surveillance Act.

2. The following shall be added to the end of Section 4(b) of these standard NSA FISA procedures:

With respect to any other communication where it is apparent to NSA processing personnel that the communication is between a person and the person's attorney (or someone acting on behalf of the attorney) concerning legal advice being sought by the former from the latter, such communications relating to foreign intelligence information may be retained and disseminated within the U.S. Intelligence Community if the

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communications are specifically labeled as being privileged. However, such communications may not be disseminated outside of the U.S. Intelligence Community without the prior approval of the Assistant Attorney General for the National Security Division or his designee.

3. The following shall replace subsections (a), (b), and (c) of Section 8 of these standard NSA FISA procedures:

NSA may disseminate nonpublicly-available identity or personally identifiable information concerning United States persons to foreign governments provided that such information is foreign intelligence information and either (i) the Attorney General approves the dissemination; or (ii) NSA disseminates the information under procedures approved by the Attorney General. In addition, NSA may disseminate such foreign intelligence information, to the extent authorized by the Director of National Intelligence (DNI) and in accordance with DNI directives, subject to the following procedures:¹⁴

(1) Disseminations to [REDACTED]

[REDACTED] may be made upon the approval of any person designated for such purpose by the Director of NSA.

(2) Disseminations to [REDACTED] foreign governments may be made upon the approval of the NSA's Office of General Counsel, upon consideration of the following factors: the national security benefit the United States may reasonably expect to obtain from making the dissemination; the anticipated uses to which the foreign government will put the information; and any potential for economic injury, physical harm, or other restriction of movement to be reasonably expected from providing the information to the foreign government. If the proposed recipient(s) of the dissemination have a history of human rights abuses, that history should be considered in assessing the potential for economic injury, physical harm, or other restriction of movement, and whether the dissemination should be made. In cases where there is a reasonable basis to anticipate that the dissemination will result in economic injury, physical harm, or other restriction of movement: (i) the approval of the NSA's Signals Intelligence Director will also be required; and (ii) if dissemination is approved, NSA will undertake reasonable steps to ensure that the disseminated information will be used in manner consistent with United States law, including Executive Order No. 12,333 and applicable federal criminal statutes.

¹⁴ and b(7)(E)

[REDACTED]

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(3) NSA will make a written record of each dissemination approved pursuant to these procedures, and information regarding such disseminations and approvals shall be made available for review by the National Security Division, United States Department of Justice, on at least an annual basis.

4. Regarding dissemination of evidence of a crime, Sections 5(a)(2) and 6(b)(8) of these standard NSA FISA procedures shall be superseded by the following:

Information that is not foreign intelligence information, but reasonably appears to be evidence of a crime that has been, is being, or is about to be committed, may be disseminated (including United States person identities) to the FBI and other appropriate federal law enforcement authorities, in accordance with 50 U.S.C. § 1806(b), Executive Order No. 12,333, and, where applicable, the crimes reporting procedures set out in the August 1995 'Memorandum of Understanding: Reporting of Information Concerning Federal Crimes,' or any successor document.

5. The following shall be added to end of Section 6 of these standard NSA FISA procedures:

NSA may disseminate all communications acquired to the CIA, which shall process any such communications in accordance with minimization procedures approved by this Court.

(c) The following additional modifications to the standard NSA FISA minimization procedures for electronic surveillance:

1. Notwithstanding sections 3(c)(2) and (e), 5(b), and 6(a) of the standard NSA FISA procedures, communications acquired under this Order may be retained for five years, unless this Court approves retention for a longer period. The communications that may be retained under this Order include electronic communications acquired because of limitations on NSA's ability to filter communications, as described in Exhibit C to the application.

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2. Section 3(c)(6) of these standard NSA FISA minimization procedures is deleted and replaced with:

To the extent reasonably possible, NSA personnel with access to the data acquired pursuant to this authority shall query the data in a manner designed to minimize the review of communications of or concerning U.S. persons that do not contain foreign intelligence information or evidence of a crime.

3. Section 3(g)(1) of these standard NSA FISA minimization procedures, relating to absences "from premises under surveillance" by agents of a foreign power, shall not apply to this surveillance.

(5) With each request for reauthorization, the Government shall (i) present a list of current selectors previously reported to the Court that the Government intends to continue to task for collection under the reauthorization; (ii) identify any such selectors that are reasonably believed to be used by U.S. persons outside the United States; and (iii) assess the efficacy of the surveillance described in footnote 6 above in acquiring the communications of the targeted foreign powers.

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(6) The CIA shall minimize all communications received under this order as provided in Exhibit F to the application.

Signed 01-10-2007 002:18 Eastern Time
Date Time

This authorization regarding [REDACTED]

[REDACTED] expires at 3:00 pm

on the 16th day of APRIL, 2007.


MALCOLM J. HOWARD
Judge, United States Foreign
Intelligence Surveillance Court

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