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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

UNITED STATES

2010 JAN 11 PM 3:32

FOREIGN INTELLIGENCE SURVEILLANCE COU

CLERK OF COURT

WASHINGTON, D. C.

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

Docket Number: BR 09-19

MOTION FOR AMENDED SECONDARY ORDER

The United States of America, through the undersigned Department
of Justice Attorneys, hereby moves the Court, pursuant to the Foreign
Intelligence Surveillance Act of 1978, as amended (the Act), Title

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Classified by: David S. Kris, Assistant
Attorney General, NSD, DOJ

Reason: 1.4 (c)

Declassify on: 8 January 2035

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50, United States Code (U.S.C.), § 1861, to issue an amended secondary order [REDACTED] ~~(TS//SI//NF)~~

The United States, in support of this Motion, states:

1. Upon consideration of an application by the United States, on December 16, 2009, the Honorable Reggie B. Walton, of this Court, issued orders in the above-captioned docket number requiring the production to the National Security Agency of the tangible things described in the application (telephone call detail records or "telephony metadata") for investigations to protect against international terrorism concerning activities of [REDACTED]

[REDACTED]

as further defined in the application, the "Foreign Powers"), which investigations are being conducted by the FBI under guidelines the Attorney General has approved pursuant to Executive Order 12333, as amended. ~~(S//SI)~~

2. The Court found in the primary order that:

a. There are reasonable grounds to believe that the tangible things sought are relevant to authorized

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

b. The tangible things sought could be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things. [50 U.S.C. § 1861(c)(2)(D)]

c. The application includes an enumeration of the minimization procedures the government proposes to follow with regard to the tangible things sought. Such procedures are similar to the minimization procedures approved and adopted as binding by the order of this Court in Docket Number BR 09-09 and its predecessors. [50 U.S.C. § 1861(c)(1)] ~~(TS//SI//NF)~~

3. The Government incorporates by reference the application, all documents filed in support of the application, and the orders issued in this docket. ~~(S)~~

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4. The Court issued, among others, a secondary order requiring

[REDACTED] the tangible things described in the application.

[REDACTED] requested a secondary order reflecting the findings of the Court in the primary order as described in paragraph 2 above.

Accordingly, the government seeks an amended secondary order to

[REDACTED] that incorporates the following findings of the Court, derived from the primary order as described above:

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

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

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3. The application includes an enumeration of the minimization procedures the government proposes to follow with regard to the tangible things sought."

~~(TS//SI//NF)~~

5. All other provisions of the original orders of the Court dated December 16, 2009, in this docket, will remain unaffected, including the time and date of expiration of the authorities granted therein. ~~(TS//SI//NF)~~

A proposed order effecting this request accompanies this motion.

(S)

Respectfully submitted,

Tashina Gauhar
Deputy Assistant Attorney General

1/8/10

Date

By:

[REDACTED]
Office of Intelligence
National Security Division
U.S. Department of Justice
Attorneys for the Applicant

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APPROVAL

I hereby approve the filing of this Motion for Amended Secondary Order to acquire certain call detail records or "telephony metadata" [REDACTED] with the United States Foreign Intelligence Surveillance Court. ~~(TS//SI//NF)~~

Date

Eric H. Holder, Jr.
Attorney General of the United States

Date

David W. Ogden
Deputy Attorney General of the United States

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Date

David S. Kris
Assistant Attorney General
National Security Division

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