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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

UNDER SEAL

IN RE DNI/AG 702(h) CERTIFICATION 2025-A AND ITS PREDECESSOR CERTIFICATIONS.	Docket No. 702(j)-25-01 and predecessor dockets
IN RE DNI/AG 702(h) CERTIFICATION 2025-B AND ITS PREDECESSOR CERTIFICATIONS.	Docket No. 702(j)-25-02 and predecessor dockets
IN RE DNI/AG 702(h) CERTIFICATION 2025-C AND ITS PREDECESSOR CERTIFICATIONS.	Docket No. 702(j)-25-03 and predecessor dockets

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion and Order concerns the "Government's Ex Parte Submission of Reauthorization Certifications and Related Procedures, Ex Parte Submission of Amended Certifications, and Request for an Order Approving Such Certifications and Amended Certifications," which was filed by the National Security Division (NSD) of the United States Department of Justice (DOJ) on January 17, 2025 ("January 17, 2025 Submission") pursuant to Section 702(h)(1)(A) of the Foreign Intelligence Surveillance Act (FISA), as amended.[1] This Court, the Foreign Intelligence Surveillance Court (FISC), has jurisdiction under Section 702(j) to

[1] Section 702 of FISA is codified at 50 U.S.C. § 1881a and is referenced herein as "Section 702."

review such certifications, amended certifications, and the targeting, minimization, and querying procedures submitted therewith. For the reasons stated below, the Court finds that the certifications and amended certifications contain all the required elements and that the targeting, minimization, and querying procedures are consistent with applicable statutory requirements and the Fourth Amendment to the Constitution of the United States, and accordingly approves the certifications, amended certifications, and use of the accompanying procedures. This Opinion provides the written statement of reasons required by Section 702(j)(3)(C).

I. PROCEDURAL BACKGROUND

NSD filed the January 17, 2025 Submission pursuant to Section 702(h). It includes three certifications ("the 2025 Certifications") executed by the Attorney General (AG) and Director of National Intelligence (DNI) to authorize acquisitions of foreign intelligence information about identified types of persons and entities pursuant to Section 702(a):

- DNI/AG 702(h) Certification 2025-A, *In the Matter of* [redacted] ("Certification 2025-A");
- DNI/AG 702(h) Certification 2025-B, *In the Matter of* [redacted] ("Certification 2025-B"); and
- DNI/AG 702(h) Certification 2025-C, *In the Matter of* [redacted] ("Certification 2025-C").

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Each 2025 Certification is accompanied by targeting and minimization procedures for the National Security Agency (NSA) (Exhibits A and B), targeting and minimization procedures for the Federal Bureau of Investigation (FBI) (Exhibits C and D), minimization procedures for the Central Intelligence Agency (CIA) and the National Counterterrorism Center (NCTC) (Exhibits E and G), and querying procedures for the NSA, FBI, CIA, and NCTC (Exhibits H, I, J, and K). These procedures are identical for each certification. Exhibit F to Certification 2025-A and Exhibit F to Certification 2025-B, which are not the same, identify targeted individuals and entities. Each 2025 Certification is also supported by affidavits of the Directors of the NSA, FBI, and CIA and the Acting Director of the NCTC. The January 17, 2025 Submission also includes a memorandum prepared by NSD ("Jan. 17, 2025 Mem."), which describes the contents of the submission.

The 2025 Certifications reauthorize acquisitions of foreign intelligence information under DNI/AG 702(h) Certifications 2024-A, 2024-B, and 2024-C ("the 2024 Certifications"), which are set to expire on April 4, 2025. *See* Certification 2025-A at 4; Certification 2025-B at 4; Certification 2025-C at 3; Jan. 17, 2025 Mem. at 2. The undersigned judge approved the 2024 Certifications and accompanying procedures on April 4, 2024, *see* Docket Nos. 702(j)-24-01, 702(j)-24-02, 702(j)-24-03, Mem. Op. and Order (Apr. 4, 2024) ("Apr. 4, 2024 Op."), and amendments to those certifications, with accompanying procedures, on September 17, 2024, *see* Mem. Op. and Order (Sept. 17, 2024) ("Sept. 17, 2024 Op."). The 2025 Certifications also amend

prior Section 702 certifications for the A, B, and C subject matters[2] to authorize use of the NSA, FBI, CIA, and NCTC minimization procedures and CIA querying procedures accompanying the 2025 Certifications in connection with information acquired under those prior certifications. (The NSA and FBI targeting procedures and NSA, FBI, and NCTC querying procedures for the 2025 Certifications are identical to ones already approved by the FISC for use under the Predecessor Certifications. Jan. 17, 2025 Mem. at 3.)[3]

To assist in reviewing the January 17, 2025 Submission, the Court appointed Amy Jeffress, Esq., and Winston Kirby Mayo, Esq., to serve as amici curiae. Order Appointing Amici Curiae (Jan. 21, 2025) ("Jan. 21, 2025 Order").[4] At that time, Ms. Jeffress and Mr. Mayo were also serving as amici in the undersigned judge's review of DNI/AG 702(h) Certification 2024-D, *In the Matter of* [redacted]

[2] *See* Certifications submitted in Docket Nos. 702(i)-08-01, 702(i)-08-02, 702(i)-09-01, 702(i)-09-02, 702(i)-09-03, 702(i)-10-01, 702(i)-10-02, 702(i)-10-03, 702(i)-11-01, 702(i)-11-02, 702(i)-11-03, 702(i)-12-01, 702(i)-12-02, 702(i)-12-03, 702(i)-13-01, 702(i)-13-02, 702(i)-13-03, 702(i)-14-01, 702(i)-14-02, 702(i)-14-03, 702(i)-15-01, 702(i)-15-02, 702(i)-15-03, 702(i)-16-01, 702(i)-16-02, 702(i)-16-03, 702(j)-18-01, 702(j)-18-02, 702(j)-18-03, 702(j)-19-01, 702(j)-19-02, 702(j)-19-03, 702(j)-20-01, 702(j)-20-02, 702(j)-20-03, 702(j)-21-01, 702(j)-21-02, 702(j)-21-03, 702(j)-23-01, 702(j)-23-02, 702(j)-23-03, 702(j)-24-01, 702(j)-24-02, and 702(j)-24-03. These Certifications, as amended most recently effective September 17, 2024, *see* Sept. 17, 2024 Op. at 14, 107-08, are collectively referred to as "the Predecessor Certifications" and the above-listed dockets are collectively referred to as "the Predecessor 702 Dockets."

[3] When it is necessary to make the distinction, this Opinion refers to the procedures approved by the Court on September 17, 2024, as "current" and the ones submitted for Court review on January 17, 2025, as "revised."

[4] This appointment extended to March 18, 2025, the time within which the Court must rule on the January 17, 2025 Submission. *See* 50 U.S.C. § 1803(i)(2)(C) (if an amicus is appointed in a Section 702 proceeding, Court "shall issue an order . . . as expeditiously as possible" but not "later than 60 days after the date on which [a] certification, procedures, or amendments are submitted" or 60 days after appointment of an amicus, "whichever is earlier").

[redacted] ("Certification D").[5] Certification D is the first Section 702 certification primarily focused on acquiring foreign intelligence information as defined at 50 U.S.C. § 1801(e)(1)(D), i.e., "information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against . . . (D) international production, distribution, or financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or precursors of any aforementioned."[6]

In the instant case, the Court directed the amici and the government to brief whether, under § 1801(e)(1)(D), "international production, distribution and financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or precursors of any aforementioned" include certain activities described below at note 22. *See* Jan. 21, 2025 Order at 5-6. The Government had described the intended scope of acquisition of § 1801(e)(1)(D) information under Certification 2024-D as encompassing information about those activities and the Court expected that this understanding "would inform how the procedures submitted with the 2025 Certifications would be implemented." *Id.* at 6 n.5. The Court also ordered briefing of whether, "given the Government's advocated interpretation of § 1801(e)(1)(D), the procedures accompanying the 2025 Certifications comport with [FISA's] definition of minimization procedures . . . and are consistent with the Fourth Amendment." *Id.* at 6. Finally, if amici concluded that such procedures were insufficient, they were directed to address "what, if any, limitations or criteria would render them sufficient." *Id.* The government and amici timely filed their briefs. *See* Brief of Amici Curiae

[5] *See* Docket No. 702(j)-24-04, Order Appointing Amici Curiae (Dec. 19, 2024). The proceeding in Docket No. 702(j)-24-04 is referred to as "the 2024-D Proceeding."

[6] Subparagraph (D) was added to § 1801(e)(1) in 2024. *See* Reforming Intelligence and Securing America Act § 23, Pub. L. No. 118-49, 138 Stat. 862, 893 (2024) (RISAA).

(Feb. 11, 2025) ("Amici Br."); Government's Response to Brief of Amici Curiae (Feb. 20, 2025) ("Gov't Resp."). The Court thanks amici for their competent assistance.

On February 20, 2025, the Court issued its decision in the 2024-D Proceeding. *See* Mem. Op. and Order (Feb. 20, 2025) ("Feb. 20, 2025 Op.").[7] As discussed below, the Court found in that case that certain aspects of the government's querying and minimization procedures did not comply with statutory minimization and Fourth Amendment requirements, even though those procedures are similar to ones the Court approved for use under the amended Certifications 2024-A, 2024-B, and 2024-C. The Court identified several factors that set Certification D apart from those other certifications.

First, Certification D authorizes acquisition of § 1801(e)(1)(D) information regarding "covered illicit drugs," i.e., "illicit opioids, [redacted] or cocaine," Feb. 20, 2025 Op. at 5, by targeting any non-U.S. person outside the United States who, after assessment under NSA's targeting procedures, is expected to possess, receive, and/or is likely to communicate such information.[8] A target need not have any connection to a foreign power or agent of a foreign power; indeed, the government's examples of anticipated targets under Certification D did "not link them to foreign powers or their agents and, in some cases, expressly disavow[ed] an affiliation with a foreign power." Feb. 20, 2025 Op. at 5-6. In contrast, the foreign intelligence information to be acquired "under Certifications 2024-A and 2024-B related to persons and entities that qualified as

[7] The briefing schedule in the instant case allowed for supplementary briefing on the effect of that decision, *see* Jan. 21, 2025 Order at 7, but neither the government nor amici filed such a brief.

[8] *See* Certification D at 3 (authorizing "the targeting of non-United States persons reasonably believed to be located outside the United States to acquire foreign intelligence information, as described in the accompanying affidavits and procedures"); 2024-D NSA Targeting Proc. § I, at 5 (NSA must "reasonably assess . . . that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning the international production, distribution, or financing of" covered illicit drugs).

'foreign powers' and their 'agents' as defined in 50 U.S.C. § 1801(a) and (b)," as was true of some categories of information to be acquired under Certification 2024-C. *Id.* at 4.

In addition, the breadth and nature of Certification D's target set make it more likely that U.S.-person information will be incidentally acquired than under the A, B, and C certifications. In particular, some of the potential targets described by the government '[redacted]." *Id.* at 28. Even if, for targeting purposes, "NSA has a reasonable basis to believe" such a target will communicate § 1801(e)(1)(D) information, "there will also be a reasonable basis to believe [the target] will communicate a lot of [other] information" as well. *Id.* at 29. It therefore "is virtually guaranteed that many of the communications acquired pursuant to Certification D will not constitute 'foreign intelligence information' – and many of those may concern U.S. persons." *Id.* Under the "broad scope" of Certification D, it also is "likely that not all [acquired] information that *relates to* the ability of the United States to protect against international drug trafficking . . . will also *be necessary to* that ability." *Id.* at 30 (emphasis in original). In such cases, the information would not be § 1801(e)(1)(D) information, insofar as it concerns U.S. persons.

Finally, collection under Certification D "is reasonably expected to result in [obtaining] evidence of ordinary drug crime . . . potentially concerning U.S. persons" to a greater extent than evidence of ordinary (i.e., non-foreign intelligence) crimes appears in acquisitions under amended Certifications 2024-A, 2024-B, and 2024-C. *Id.* at 7. Although the FBI is not permitted to query and work with unminimized information acquired under Certification D for operational or investigative purposes, NSA and CIA may disseminate evidence of drug offenses involving U.S. persons, as well as § 1801(e)(1)(D) information, to the FBI and other law enforcement agencies. *Id.* at 7-8.

The rest of this Opinion proceeds as follows. The next section (Section II) provides background information on the Section 702 program. Section III discusses the Court's finding that the pending certifications and amended certifications contain all statutorily required elements. Section IV discusses the revised targeting, minimization, and querying procedures, and sets forth the bases for the Court's findings that such procedures, as written, meet the statutory requirements. Section V discusses the Court's finding that such procedures, as written, are consistent with the requirements of the Fourth Amendment. Section VI explains the Court's finding that the revised procedures are also likely to be implemented in a manner that is consistent with applicable statutory and Fourth Amendment requirements. Section VII summarizes the Court's disposition of this matter and lays out certain reporting and other requirements.

II. BACKGROUND ON SECTION 702

Under Section 702(a), the AG and DNI may authorize jointly, for a period of up to one year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information,[9] upon the issuance of an order of this Court under

[9] FISA defines "foreign intelligence information" as:

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against —
(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power;
(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or
(D) international production, distribution, or financing of illicit synthetic drugs, opioids, cocaine, or other drugs driving overdose deaths, or precursors of any aforementioned; or

Section 702(j)(3) or a determination of exigent circumstances by the AG and DNI under Section 702(c)(2). Section 702(b) imposes several limitations. Such acquisitions:

> (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
>
> (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
>
> (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
>
> (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;
>
> (5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a); and
>
> (6) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

§ 702(b)(1)-(6).

"Generally speaking, decisions to target a person under Section 702 are effected by tasking for acquisition one or more selectors (e.g., identifiers for email or other electronic-communication accounts) associated with that person." Sept. 17, 2024 Op. at 9 (internal quotation marks omitted). The government acquires information for tasked selectors "from or with the assistance of an electronic communication service provider" pursuant to directives issued by the AG and DNI. § 702(h)(2)(A)(vi), (i)(1). NSA acquires communications [redacted]

> (2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to —
> (A) the national defense or the security of the United States; or
> (B) the conduct of the foreign affairs of the United States.

50 U.S.C. § 1801(e).

[redacted] which is sometimes called "upstream" collection. Sept. 17, 2024 Op. at 9. In "downstream" collection, NSA acquires "communications from or with the assistance of Internet Service Providers, [redacted] *Id.* (internal quotation marks and brackets omitted). The FBI acquires [redacted] from downstream providers. *Id.* at 10.[10] The CIA and NCTC do not conduct Section 702 acquisitions, but they do receive unminimized[11] information acquired by the FBI and NSA under the A, B, and C certifications. *Id.*

Section 702(j)(3)(A)-(C) governs entry of an order by the FISC respecting a certification and accompanying procedures:

[10] In April 2022, the Court approved acquisitions by means of [redacted] *See* Docket Nos. 702(j)-21-01, 702(j)-21-02 702(j)-21-01, Mem. Op. and Order at 81-120 (Apr. 21, 2022) ("Apr. 21, 2022 Op."). The Court also established reporting and implementation requirements for such acquisitions. *See id.* at 126-27. The Court has approved continuation of such acquisitions on the same basis, most recently in September 2024. *See* Sept. 17, 2024 Op. at 10 n.11. The government has not reported any changed circumstances and proposes to continue such acquisitions on the same terms pursuant to Certification 2025-A. *See* 2025-A DirNSA Aff. ¶ 5, at 2-3; NSA Targeting Proc. § VI, at 11-13; NSA Minimization Proc. § 4(b)(3), at 5 n.1. The Court makes the findings necessary to approve continuation of [redacted] for the reasons stated in the April 21, 2022 Opinion and carries forward related requirements. *See infra* p. 56.

[11] This opinion uses the terms "raw" and "unminimized" interchangeably. NCTC's minimization procedures define "raw" information as:

> section 702-acquired information that (i) is in the same or substantially the same format as when NSA or FBI acquired it, or (ii) has been processed only as necessary to render it into a form in which it can be evaluated to determine whether it reasonably appears to be foreign intelligence information or to be necessary to understand foreign intelligence information or assess its importance.

NCTC Minimization Proc. § A.3.d, at 2.

> (A) Approval
> If the Court finds that a certification submitted in accordance with subsection (h) contains all the required elements and that the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.
>
> (B) Correction of deficiencies
> If the Court finds that a certification submitted in accordance with subsection (h) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d), (e), and (f)(1) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—
>
> (i) correct any deficiency identified by the Court's order not later than 30 days after the date on which the Court issues the order; or
>
> (ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.
>
> (C) Requirement for written statement
> In support of an order under this subsection, the Court shall provide, simultaneously with the order, for the record a written statement of the reasons for the order.

§ 702(j)(3)(A)-(C).

In addition, the AG and DNI "may amend a certification submitted" to the FISC "or the targeting, minimization, and querying procedures . . . as necessary at any time." § 702(j)(1)(C). The FISC has jurisdiction to review amended certifications or procedures and shall conduct such review "under the procedures set forth in [Section 702(j)]," i.e., the same ones that govern FISC review of certifications and procedures in the first instance. § 702(j)(1)(A), (C).

III. REVIEW OF THE CERTIFICATIONS AND AMENDMENTS

The FISC must determine whether the 2025 Certifications contain the required elements. § 702(j)(2)(A). The Court finds that they do.

First, they have been made under oath by the AG[9] and DNI, as required by § 702(h)(1)(A). *See* Certification 2025-A at 6-7; Certification 2025-B at 5-6; Certification 2025-C at 5-6. Certifications must also attest that:

> (i) there are targeting procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the [FISC] that are reasonably designed to—
>
> (I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and
>
> (II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;
>
> (ii) the minimization procedures to be used with respect to such acquisition—
>
> (I) meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and
>
> (II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the [FISC];
>
> (iii) guidelines have been adopted in accordance with subsection (g) to ensure compliance with the limitations in subsection (b) and to ensure that an application for a court order is filed as required by [FISA];
>
> (iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;
>
> (v) a significant purpose of the acquisition is to obtain foreign intelligence information;
>
> (vi) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and
>
> (vii) the acquisition complies with the limitations in subsection (b).

[9] FISA defines "Attorney General" to mean "the Attorney General of the United States (or Acting Attorney General), the Deputy Attorney General, or, upon the designation of the Attorney General, . . . the Assistant Attorney General for National Security." 50 U.S.C. § 1801(g). The Assistant Attorney General for National Security executed the 2025 Certifications acting on such a designation.

§ 702(h)(2)(A). The required attestations are present. *See* Certification 2025-A at 1-3; Certification 2025-B at 1-3; Certification 2025-C at 1-3.

As required by Section 702(h)(2)(B), the 2025 Certifications include targeting and minimization procedures adopted in accordance with Section 702(d) and (e). *See* Certification 2025-A at 1-2; Certification 2025-B at 1-2; Certification 2025-C at 1-2; and Exhibits A-E, G to such certifications. The AG, in consultation with the DNI, must also adopt querying procedures for information acquired under Section 702(a). § 702(f)(1). The 2025 Certifications evidence such adoption. *See* Certification 2025-A at 2; Certification 2025-B at 2; Certification 2025-C at 2; and Exhibits H-K to such certifications.

Certifications must also "be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is . . . appointed by the President, by and with the advice and consent of the Senate" or "the head of an element of the intelligence community." § 702(h)(2)(C). Each 2025 Certification is supported by such affidavits. *See supra* p. 3.

Finally, in conformance with Section 702(h)(2)(D), each 2025 Certification states that the pertinent authorization becomes "effective on March 25, 2025, or on the date upon which the [FISC] issues an order concerning" the certification "pursuant to subsection 702(j)(3) of [FISA], whichever is later." *See* Certification 2025-A at 4; Certification 2025-B at 3-4; Certification 2025-C at 3. The same effective date applies to the authorizations to apply the revised NSA, CIA, FBI, and NCTC minimization procedures and revised CIA querying procedures to information acquired under the Predecessor Certifications. *See* Certification 2025-A at 5; Certification 2025-B at 4; Certification 2025-C at 4.[12]

[12] The statement described in Section 702(h)(2)(E) is not required because there was no "exigent circumstances" determination under Section 702(c)(2).

The Court accordingly finds that the 2025 Certifications, as well as the Predecessor Certifications, as newly amended, contain all the required statutory elements.

IV. REVIEW OF THE PROCEDURES, AS WRITTEN, FOR COMPLIANCE WITH STATUTORY REQUIREMENTS

The Court also must review:

(1) the targeting procedures "to assess whether [they] are reasonably designed to—

(i) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States," § 702(j)(2)(B);

(2) the minimization procedures "to assess whether [they] meet the definition of minimization procedures under [50 U.S.C. § 1801(h) or § 1821(4)], as appropriate," § 702(j)(2)(C); and

(3) the querying procedures "adopted in accordance with subsection (f)(1)" of Section 702 "to assess whether [they] comply with the requirements of such subsection." § 702(j)(2)(D).

A. *Statutory Requirements for Targeting Procedures*

The NSA and FBI are the two agencies that have targeting procedures because they are the ones responsible for tasking selectors to acquire information. *See* Sept. 17, 2024 Op. at 19. The targeting procedures for the 2025 Certifications are identical to those for the amended 2024 Certifications and previously approved by the Court. *See id.* at 20, 29, 106-07; Jan. 17, 2025 Mem. at 3. Accordingly, the Court finds in this case that these targeting procedures, as written, are reasonably designed to ensure that any acquisitions are limited to targeting persons reasonably believed to be located outside the United States and to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. § 702(d)(1), (j)(2)(B).

B. *Statutory Requirements for Querying Procedures*

Section 702(f)(1) imposes three requirements on querying procedures. First, the AG, in consultation with the DNI, "shall adopt querying procedures consistent with the requirements of the fourth amendment . . . for information collected pursuant to an authorization under subsection (a)" of Section 702. § 702(f)(1)(A). The querying procedures for each agency have been so adopted, *see supra* p. 13, and the Court's Fourth Amendment assessment is at pages 29-33 below. The AG, in consultation with the DNI, also "shall ensure that [such] procedures . . . include a technical procedure whereby a record is kept of each United States person query term used for a query." § 702(f)(1)(B). The procedures meet this requirement as well. *See* NSA Querying Proc. § IV.B, at 4; FBI Querying Proc. § IV.E, at 6-7; CIA Querying Proc. § IV.B, at 3-4; NCTC Querying Proc. § IV.B, at 3-4. Finally, under Section 702(f)(1)(C), querying procedures "shall be subject to judicial review pursuant to" Section 702(j), as is now the case.[13]

C. *Statutory Requirements for Minimization Procedures*

The Court must review whether the minimization procedures satisfy the definition of minimization procedures at 50 U.S.C. § 1801(h) or § 1821(4), as appropriate. § 702(j)(2)(C). Those definitions require, in pertinent part:

> (1) specific procedures . . . that are reasonably designed in light of *the purpose and technique of the particular surveillance*, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;
>
> (2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in [50 U.S.C. § 1801(e)(1)], shall not be disseminated in a manner that identifies any United States person, without such

[13] The NSA and FBI querying procedures have provisions responsive to additional requirements that appear in subparagraphs (2), (3), and (6) of Section 702(f). *See* Sept. 17, 2024 Op. at 51-53, 66-69.

> person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; [and]
>
> (3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes . . . .

50 U.S.C. § 1801(h) (emphasis added); *see also* § 1821(4).[14] "Because the minimization and querying procedures work hand in hand," querying requirements are "part of [the Court's] review of whether minimization procedures satisfy" this definition. Sept. 17, 2024 Op. at 31 (internal quotation marks omitted). And because minimization at the acquisition stage is accomplished by implementing the targeting procedures, the Court has also examined them when assessing whether Section 702 procedures satisfy § 1801(h)(1). *See* Feb. 20, 2025 Op. at 30-35.

The Court will first examine revisions in the minimization and querying procedures for the 2025 Certifications, as compared to the ones for the amended 2024 Certifications. It will then consider how the government's understanding of the scope of § 1801(e)(1)(D) information and the analysis in the February 20, 2025 Opinion bear on the Court's review.

1. Revisions to Minimization and Querying Procedures

In September 2024, the Court found that, as written, the minimization and querying procedures for the amended 2024 Certifications satisfy § 1801(h). *See* Sept. 17, 2024 Op. at 30-45, 64-70, 108. On the whole, the minimization and querying procedures submitted with the 2025 Certifications are very similar.[15] The few revisions are discussed below.

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[14] Section § 1821(4) is substantively identical to § 1801(h), except that § 1821(4)(A) refers to "the purposes and technique of the particular physical search" in place of the text italicized above. For simplicity, subsequent discussion cites only to § 1801(h).

[15] "Amici submit that the Court's reasoning [in the September 17, 2024 Opinion] for why the 2024 Certifications and accompanying procedures comport with the definition of minimization procedures . . . applies with equal force to the 2025 Certifications." Amici Br. at 10.

Provisions regarding attorney-client privilege: Each agency's minimization procedures contain specific rules for handling information from attorney-client communications. *See* Revised NSA Minimization Proc. § 5, at 10-12; Revised FBI Minimization Proc. § III.D.5, at 19-24; *id.* § III.E.6, at 27-28; Revised CIA Minimization Proc. § 7a., at 5-7; Revised NCTC Minimization Proc. § C.5, at 9-11. The government has revised these provisions in response to a recommendation of the Privacy and Civil Liberties Oversight Board (PCLOB). Jan. 17, 2025 Mem. at 3-4. Although there are still some agency-specific variations in wording, "the government has made an effort to use consistent terminology and definitions" across these provisions. *Id.* at 4. For example, the current FBI procedures identify "an expert witness retained by the defense team" as someone who may have a privileged communication with a client on behalf of an attorney, but the current NSA, CIA, and NCTC procedures do not. *Id.* The revised procedures for each agency include this language. *Id*; Revised NSA Minimization Proc. § 5, at 10; Revised FBI Minimization Proc. § III.D.5, at 19; Revised CIA Minimization Proc. § 7.a, at 5; Revised NCTC Minimization Proc. § C.5, at 9.

Dissemination Relating to Travel Vetting:[16] NSA's querying procedures permit a limited form of querying raw Section 702 information to vet non-U.S. persons seeking to enter the United

[16] "For any [querying] procedures for one or more agencies . . ., the [AG], in consultation with the [DNI], shall ensure that the procedures enable the vetting of all non-United States persons who are being processed for travel to the United States using terms that do not qualify as United States person query terms . . . ." § 702(f)(6).

States and except such queries from the general requirement of being reasonably likely to retrieve foreign intelligence information. NSA Querying Proc. § IV.D, at 6-7.[17]

NSA's current minimization procedures require that disseminations of U.S.-person information retrieved by travel-vetting queries "be approved by one of several specified senior [NSA] officials . . . upon a written determination that the information to be disseminated" falls within certain categories. Sept. 17, 2024 Op. at 70. One such category is information that "'is reasonably believed to contain significant foreign intelligence information.'" *Id.* (quoting Current NSA Minimization Proc. § 8(10), at 15).[18] The revised procedures narrow this category, so that the significant foreign intelligence information must be "necessary to protect against international terrorism or any threat described in 50 U.S.C. § 1801(e)(1)(D)." Revised NSA Minimization Proc. § 8(10), at 15. (The NSA minimization procedures for Certification D include the same modification. Feb. 20, 2025 Op. at 43-44.) Thus, the determination required to disseminate this type of U.S.-person information retrieved by a travel-vetting query reflects "the two categories of

[17] This vetting process involves three steps. First, NSA automatically draws on Section 702 information [redacted]

[18] The other categories are information that "does not contain foreign intelligence information but is reasonably believed to contain evidence of a crime that has been, is being, or is about to be committed," "is necessary to understand or assess a communications security vulnerability of a United States Government or National Security system," or "pertains to an imminent threat of serious harm to life or property," in which case it "may be disseminated to the extent reasonably necessary to counter such threat." *Id.* (quoting Current NSA Minimization Proc. § 8(10), at 15-16). NSA reports that it has not disseminated any U.S.-person information pursuant to this provision. Jan. 17, 2025 Mem. at 6.

Section 702-acquired information that are currently included" in the [redacted] i.e., "information related to international terrorism and international drug trafficking." Jan. 17, 2025 Mem. at 7.

Changes to CIA procedures: There are two other revisions to CIA's procedures. First, the revised CIA minimization procedures omit several examples, which appear in the current procedures, of information CIA may retain indefinitely. *Compare* Current CIA Minimization Proc. § 3, at 3-4 *with* Revised CIA Minimization Proc. § 3, at 3. The government advises that appropriate examples will be included in "CIA policy documents and training." Jan. 17, 2025 at 8. Second, CIA's minimization and querying procedures are modified so that "assignees" – personnel from other agencies who are physically located at CIA but do not work under its direction, control or authority – are not covered by the definitions of "CIA" and "CIA personnel." *Id.*; Revised CIA Minimization Proc. § 1.c, at 1; Revised CIA Querying Proc. § III.A, at 2. "CIA does not permit assignees to have access to unminimized Section 702 information." Jan. 17, 2025 Mem. at 8-9. The CIA's procedures for Certification D include a similar change. Feb. 20, 2025 Op. at 31 n.17.

Amici advise that they do not believe the above-summarized revisions present statutory concerns. Amici Br. at 8. The Court concurs.

2. Scope and Nature of § 1801(e)(1)(D) Information to be Acquired

The February 20, 2025 Opinion particularly examined three aspects of minimization in view of the government's interpretation of § 1801(e)(1)(D): adequacy of minimization at the acquisition stage, conduct of queries using U.S.-person query terms, and dissemination of evidence of crime concerning U.S. persons. At the outset, however, it is worth emphasizing that the bifurcated nature of FISA's definition of "foreign intelligence information" is central to that Opinion's discussion of minimization. Under § 1801(e)(1), information that does *not* concern a

U.S. person qualifies as foreign intelligence information if it merely "relates to . . . the ability of the United States to protect against" one of the types of threat set out in subparagraphs (A) through (D); however, information "concerning a United States person" must be "*necessary to*. . . the ability of the United States to protect against" such a threat to constitute foreign intelligence information. § 1801(e)(1) (emphasis added).[19] Noting that "only non-U.S. persons located abroad may be targeted" by Section 702 collection, the February 20, 2025 Opinion applied the broader "relates to" standard to evaluate, under § 1801(h)(1), whether the NSA's targeting procedures reasonably minimize incidental acquisition of non-public U.S.-person information, consistent with the need to obtain, produce, and disseminate foreign intelligence information. Feb. 20, 2025 Op. at 28-35. By the same token, however, the Court held the government to the higher "necessary to" standard when its actions directly implicate information concerning U.S. persons, e.g., disseminating U.S.-person information or conducting queries using U.S.-person query terms. *Id.* at 35-40.

a. Minimization at the Acquisition Stage

In order to target a person for acquisition under the 2025 Certifications, NSA must, among other things, "reasonably assess, based on the totality of the circumstances, that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning a foreign power or foreign territory authorized for targeting" under one of the certifications. NSA Targeting Proc. § I, at 5. "This assessment must be particularized and fact-based, informed by analytic judgment, the specialized training and experience of the analyst, as

[19] Foreign intelligence information also includes "information with respect to a foreign power or foreign territory that relates to, and *if concerning a United States person is necessary to* . . . the national defense or the security of the United States" or "the conduct of the foreign affairs of the United States." § 1801(e)(2) (emphasis added).

well as the nature of the foreign intelligence information expected to be obtained." *Id.* Analysts must "provide a written explanation of the basis" for this assessment. *Id.* § III, at 9. The NSA targeting procedures for Certification D have similar provisions. *See* Feb. 20, 2025 Op. at 32-33. The government also represents that each Section 702 tasking "must have a significant purpose to acquire foreign intelligence information." Transcript of Hearing in 2024-D Proceeding at 14 (Feb. 13, 2025) ("Hr. Tr.").[20] Post-tasking, the contents of acquired communications are reviewed and, if foreign intelligence information is not being obtained, the selector is detasked. Hr. Tr. at 18-19. DOJ conducts oversight reviews of all tasking decisions. *Id.* at 19.

In reviewing the procedures for the amended 2024 Certifications, the Court noted that, as a result of the enactment of § 1801(e)(1)(D), "a wider range of foreign intelligence information may be sought" under those certifications. Sept. 17, 2024 Op. at 33. Subsequently, in the 2024-D Proceeding, the government spelled out its understanding of how broadly Section 702 acquisitions of § 1801(e)(1)(D) information may sweep.[21] In that case, the NSA sought to acquire § 1801(e)(1)(D) information by targeting "non-United States persons located outside the United States that possess, are expected to receive, and/or are likely to communicate information concerning the international production, distribution, or financing of illicit opioids, [redacted] or cocaine (collectively 'covered illicit drugs')," with "international production," "international distribution," and "international financing" broadly defined. 2024-D DirNSA Aff. ¶ 6, at 2-3.[22] The government intends to apply the same understanding of

[20] NSA's targeting procedures apply to all Section 702 taskings. For [redacted] FBI applies its own targeting procedures after NSA has evaluated the account under its procedures. *See* Apr. 4, 2024 Op. at 13-15.

[21] In the instant case, amici's brief "incorporate[s] our prior arguments and recommendations" in the 2024-D Proceeding "as to the plain and ordinary meaning" of § 1801(e)(1)(D). Amici Br. at 7.

[22] Per the government's understanding:

§ 1801(e)(1)(D) information under the procedures accompanying the 2025 Certifications. *See* Gov't Resp. at 8 ("the full statutory definition of foreign intelligence information" at § 1801(e)(1)(D) "is applicable to the procedures" for the 2025 Certifications).

The Court found the scope of proposed acquisition under Certification D to be compatible with § 1801(e)(1)(D) and adequate minimization of acquisition under § 1801(h)(1). "[F]or purposes of targeting a non-United States person outside the United States,"

> the standard for what constitutes 'foreign intelligence information' under § 1801(e)(1)(D) is whether information sought to be acquired *relates to the ability of the United States to protect against* the international production, distribution, or financing of covered illicit drugs or their precursors, not whether it directly concerns activities that fall within the literal meanings of the terms, production, distribution, or financing.

'International production' includes [redacted] occurring totally outside the United States, or transcending national boundaries, under circumstances in which NSA reasonably believes that the intended use is for or will involve the production of covered illicit drugs.

'International distribution' includes [redacted] illicit drugs [redacted] occurring totally outside the United States, or transcending national boundaries, under circumstances in which NSA reasonably believes that the intended use is for or will involve the production or distribution of covered illicit drugs.

'International financing' includes [redacted] occurring totally outside the United States, or transcending national boundaries, that NSA reasonably believes are derived from or will be used for the production or distribution of covered illicit drugs – [redacted]

Feb. 20, 2025 Op. at 6 (quoting 2024-D DirNSA Aff. ¶ 6, at 3 with internal formatting altered).

Feb. 20, 2025 Op. at 24-25 (emphasis in original).[23] Given the broad ordinary meaning of "relates to," "the information sought need only bear on, or have some relation to, the ability of the United States to protect against the international production, distribution or financing of covered illicit drugs" in order to qualify as § 1801(e)(1)(D) information. *Id.* at 25. Affording due deference to Executive Branch assessments of what protective measures are appropriate to counter the threats described in § 1801(e)(1)(D) and what information bears on the ability to implement those measures, "it is not apparent" that any information concerning "the activities and entities described in the DirNSA Affidavit . . . categorically falls outside the scope of § 1801(e)(1)(D)." *Id.* at 27. On that understanding, the Court found that the targeting procedures adequately minimized the incidental acquisition of non-public U.S.-person information, consistent with the need to obtain, produce and disseminate foreign intelligence information, as required by § 1801(h)(1). *Id.* at 34-35, 64.

The same reasoning supports finding that the targeting procedures for the 2025 Certifications afford adequate minimization at the acquisition stage. In addition, as the Court observed regarding the amended 2024 Certifications, acquisitions under the 2025 Certifications are "limited to particular subject matters," so that the government is not authorized to target non-U.S. persons overseas simply "because they are likely to possess, receive or communicate foreign intelligence information." Sept. 17, 2024 Op. at 33, 35. Rather, the expected foreign intelligence information must "also concern[ ] a foreign government [redacted] an international terrorist group [redacted]; or . . . [specified]

[23] Within § 1801(e)(1)(D), "'international' should be read as modifying all three terms that follow it" – production, distribution, and financing. *Id.* at 19 n.13. Insofar as Certification D acquisitions must pertain to a "covered illicit drug," "the scope of collection" under Certification D is "narrower than the statutory definition of 'foreign intelligence information.'" *Id.* at 17-18.

activities related [redacted] *Id.* at 35. Given that requirement, one would anticipate that few taskings under the 2025 Certifications will be based on an expectation that § 1801(e)(1)(D) information is the *only* type of foreign intelligence information to be acquired: [redacted] Thus, there is further reason to believe that incidental acquisition of U.S.-person information under the 2025 Certifications will be appropriately minimized, "consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information." § 1801(h)(1).

b. U.S.-Person Queries[24]

The rules for U.S.-person queries are especially important because such queries typically further "an investigative or analytical interest" in "a particular U.S. person . . . who necessarily was not a target of Section 702 acquisition" and "result in a further, post-acquisition intrusion into

[24] The provisions of each agency's querying procedures cited in this discussion are the same in both revised and current procedures for Certifications A, B, and C. The cited provisions in the NSA and CIA querying procedures are also the same in those agencies' procedures for Certification D.

the privacy" of such person. Apr. 4, 2024 Op. at 28. As a general rule, all queries of raw Section 702 information for investigative or intelligence-analysis purposes "must be reasonably likely to retrieve foreign intelligence information, as defined by FISA." NSA Querying Proc. § IV.A, at 4; FBI Querying Proc. § IV.A, at 4; CIA Querying Proc. § IV.A, at 3; NCTC Querying Proc. § IV.A, at 3.[25] To meet this standard, (1) "the person conducting the query must have the purpose of retrieving foreign intelligence information," (2) such person also "must have a specific factual basis to believe that it is reasonably likely to retrieve foreign intelligence information," and (3) "the query must be reasonably tailored to retrieve foreign intelligence information without unnecessarily retrieving other information." NSA Querying Proc. § IV.A, at 4; FBI Querying Proc. § IV.A, at 4; CIA Querying Proc. § IV.A, at 3; NCTC Querying Proc. § IV.A, at 3. Each agency must create a record of each U.S.-person query term used for a query. NSA Querying Proc. § IV.B, at 4; FBI Querying Proc. § IV.E, at 6-7; CIA Querying Proc. § IV.B, at 3-4; NCTC Querying Proc. § IV.B, at 3-4. Additional documentation and approval requirements apply to use of U.S.-person query terms. For example, prior to conducting a U.S.-person query, "FBI personnel will provide a written statement of the specific factual basis to believe that the query is reasonably likely to retrieve foreign intelligence information or otherwise falls within an exception described" in FBI's querying procedures. FBI Querying Proc. § IV.B, at 4. Unless they have "a reasonable belief that conducting [a U.S.-person] query could assist in mitigating or eliminating a threat to life or serious bodily harm," they must also obtain the prior approval of an attorney or supervisor. *Id.* § IV.D.1,

[25] The only exceptions are NSA travel-vetting queries, which do not involve U.S.-person query terms, *see supra* pp. 17-19, and certain limited circumstances in which the FBI may conduct queries solely to retrieve evidence of crime, *see* FBI Querying Proc. § IV.C, at 4-5. The procedures also except certain types of queries conducted for non-investigative or analytical purposes from this "reasonably likely to retrieve foreign intelligence information" standard. *See, e.g.,* NSA Querying Proc. § IV.C.3 & 5, at 6 (excepting queries to comply with a court order or to "identify information that must be produced or preserved" for litigation).

at 5. Under NSA's procedures, use of a U.S.-person query term to search content information must be approved in advance by NSA's Office of General Counsel (OGC) after the individual seeking to run the query has "provide[d] a statement of facts establishing" that the proposed query term "is reasonably likely to retrieve foreign intelligence information, as defined by FISA." NSA Querying Proc. § IV.A, at 4. Under the CIA and NCTC procedures, use of a U.S.-person query term "must be accompanied by a statement of facts showing that the use of that query term is reasonably likely to retrieve foreign intelligence information, as defined by FISA." CIA Querying Proc. § IV.B.2, at 4; NCTC Querying Proc. § IV.B.2, at 4.[26]

In September 2024, the Court found that procedures that included these querying rules were consistent with the requirements of § 1801(h), as applied to information acquired under amended Certifications 2024-A, B, and C. Sept. 17, 2024 Op. at 29-45. But as applied to information acquired under Certification D, the Court found similar procedures deficient under § 1801(h). Feb. 20, 2025 Op. at 37-40. The deficiency inhered in not taking adequate account of the requirement that, in order for a U.S.-person query to be reasonably likely to retrieve foreign intelligence information, it must be reasonably likely to retrieve information that is *necessary to* – not merely related to – the ability of the United States to protect against, e.g., international terrorism or international production of illicit synthetic drugs. § 1801(e)(1)(C)-(D). The government argued that the procedures implicitly adopt the necessity requirement by incorporating § 1801(e)'s definition of foreign intelligence information and that agency personnel are well-versed in the standards that apply to U.S.-person information. *See* Feb. 20, 2025 Op. at 38-39. The Court was nonetheless concerned that the Certification D procedures do not "expressly acknowledge" this

[26] After the fact, DOJ conducts a compliance review of each U.S.-person query conducted by the FBI, NSA, and CIA. RISAA § 2(c), 138 Stat. at 863; Hr. Tr. at 29.

necessity requirement for U.S.-person queries or "provide guidance on how to determine whether information qualifies as 'foreign intelligence information' under the U.S.-person [necessity] standard for purposes of dissemination, querying, or retention." *Id.* at 39.[27] Those concerns were heightened by "the broad scope of information potentially covered by Certification D," under which "more minor actors in the international drug trade" may be targeted. Feb. 20, 2025 Op. at 39. The breadth of Certification D collection also "makes it far more likely that a substantial volume of information acquired will not meet the U.S.-person [necessity] standard," *id.*, even if it would meet the "relates to" standard applicable to non-U.S. person information. "In this new context," the Court found that § 1801(h) required the procedures to include additional safeguards against "unnecessary, and thus improper," U.S.-person queries, notwithstanding that procedures previously approved by the Court, including those approved in the September 17, 2024 Opinion, share the same "lack of specificity" regarding the necessity standard. *Id.*

Targeting under the 2025 Certifications will closely resemble targeting under amended Certifications 2024-A, 2024-B, and 2024-C, under which "non-U.S. persons overseas may not be targeted because they are likely to possess, receive or communicate foreign intelligence information described in § 1801(e)(l)(D)," or any other category of foreign intelligence information, unless such information "also concerns a foreign government [redacted] an international terrorist group; or [certain] activities related to [redacted] Sept. 17, 2024 Op. at 35. Acquisitions under those targeting criteria are far less likely than Certification D acquisitions to

[27] The minimization procedures permit indefinite retention of foreign intelligence information, despite generally applicable timetables for destroying raw Section 702 information. *See, e.g.*, FBI Minimization Proc. § III.D.4, at 17-19; CIA Minimization Proc. §§ 2.a, 3, at 2-3. They also permit dissemination of foreign intelligence information concerning U.S. persons. *See, e.g.*, *id.* § 5, at 3-4; FBI Minimization Proc. § IV.A, at 43-44.

involve U.S.-person information that falls short of the necessity standard for foreign intelligence information. *See* Feb. 20, 2025 Op. at 39. Accordingly, and consistent with the Court's findings in the September 17, 2024 Opinion, the Court concludes that § 1801(h) does not require modification of the querying and minimization procedures for the 2025 Certifications with respect to the necessity standard for what constitutes foreign intelligence information concerning U.S. persons.

c. *Dissemination of Evidence of Crime Concerning U.S. Persons*

The minimization procedures for the 2025 Certifications permit the dissemination for law enforcement purposes of non-foreign intelligence information that is evidence of crime, even if it concerns a U.S. person. *See, e.g.*, NSA Minimization Proc. § 8(9), at 15; FBI Minimization Proc. § IV.B, at 44; CIA Minimization Proc. § 7.d, at 9-10. They do not include an additional requirement, which appears in NSA's procedures for Certification D and applies to some disseminations of criminal evidence that concerns a U.S. person and is not foreign intelligence information: specifically, U.S.-person information disseminated "solely . . . because it is reasonably believed to contain evidence of a violation of U.S. drug laws . . . that involves anything other than the international production, distribution, or financing of" covered illicit drugs "or precursor chemicals, additives, adulterants, or equipment that is used in the production of any aforementioned." 2024-D NSA Minimization Proc. § 8(9)a, at 14. Disseminations of such information are permitted only "if a high-level official determines in writing that the information is reasonably believed to contain evidence of a violation of United States criminal law involving either significant quantities of illicit drugs or activities that increase [their] lethality . . ., and is necessary to protect against serious crime." Feb. 20, 2025 Op. at 36.[28]

[28] The CIA's minimization procedures have a similar requirement. 2024-D CIA Minimization Proc. § 7.d(1), at 10.

The government advised that "these heightened dissemination requirements help[ ] ensure that [Certification D] does not become an instrument of ordinary crime control." *Id.* n.20 (internal quotation marks omitted). The Court noted, however, that there was no comparable requirement for disseminating non-foreign intelligence information evidence of a crime that *does* involve a covered illicit drug, even though evidence of such a crime may not qualify as § 1801(e)(1)(D) information because it does not meet the necessity standard applicable to U.S.-person information. *Id.* at 36-37. These concerns are not substantially presented by the 2025 Certifications because, as noted above, acquisitions directed at the distinctive A, B, and C target sets are less likely to involve evidence of ordinary crimes or U.S.-person information that falls short of the necessity standard. *See id.* at 7, 39.

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Based on the foregoing, the Court finds that the procedures for the 2025 Certifications are consistent with the requirements of § 1801(h).

V. REVIEW OF THE PROCEDURES, AS WRITTEN, UNDER THE REQUIREMENTS OF THE FOURTH AMENDMENT

The Court now must consider whether the revised targeting, querying, and minimization procedures "are consistent . . . with the fourth amendment." § 702(j)(3)(A). "Although the Fourth Amendment does not extend to searches or seizures involving aliens located outside the United States' territorial jurisdiction," it applies to the "communications between [Section 702] targets and U.S. persons [that] will likely be acquired." Feb. 20, 2025 Op. at 44.

This is the fourth time since April 2024 that the Court is reviewing Section 702 procedures for compliance with the requirements of the Fourth Amendment, *see id.* at 44-64; Sept. 17, 2024 Op. at 70-78; Apr. 4, 2024 Op. at 24-32, and the procedures for the 2025 Certifications are similar

to ones previously reviewed. The Court therefore relies on its prior discussions of why the foreign intelligence exception to the warrant requirement applies to acquisitions under such procedures, *see* Feb. 20, 2025 Op. at 45-54; Apr. 4, 2024 Op. at 24-25, and why the Court evaluates queries "in the context of the [Section 702] program as a whole rather than require each U.S.-person query to qualify for an exception to the warrant requirement and then satisfy an independent test of reasonableness under the Fourth Amendment," *see* Feb. 20, 2025 Op. at 55-57. This discussion focuses on what otherwise has changed since September 2024, when the Court approved the procedures for amended Certifications 2024-A, 2024-B, and 2024-C.

First, as discussed above, the procedures for the 2025 Certifications include modest revisions, as compared to the ones for the amended 2024 Certifications. *See supra* pp. 16-19. The amici advise those changes do not present constitutional concerns. Amici Br. at 8. The Court concludes that they do not materially affect the assessment of the reasonableness of the procedures under the Fourth Amendment. That leaves the Court to evaluate how the breadth of the government's interpretation of what constitutes foreign intelligence information under § 1801(e)(1)(D) may affect that assessment.

> The Fourth Amendment proscribes unreasonable searches and seizures.
>
> > "What is reasonable, of course, depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." "Thus, the permissibility of a particular practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."

Feb. 20, 2025 Op. at 45 (quoting *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989); citations omitted). The Court therefore "must assess whether the procedures sufficiently minimize the privacy intrusion that occurs when U.S.-person communications are incidentally collected while also taking into account the government's interest in acquiring the foreign intelligence

information" authorized under the certification at issue. *Id.* at 57 (internal quotation marks omitted).

In the 2024-D Proceeding, the Court found "the government's interest in acquiring information that helps combat international drug trafficking" to be "compelling." *Id.* at 57-58. As to minimizing "the intrusion on U.S.-persons' privacy interests," the Court "focused on the same concerns" as it had when applying statutory minimization requirements, *id.* at 58, particularly regarding U.S.-person queries and dissemination of evidence of crimes involving covered illicit drugs that does not constitute foreign intelligence information, *id.* at 58-60. As discussed above, those concerns stem from the distinctive scope and nature of information to be acquired under Certification D. *See supra* p. 27 (broad scope of Certification D makes it much more likely that U.S.-person information will be acquired that does not meet the necessity standard in the definition of foreign intelligence information); p. 7 (Certification D acquisitions are more likely to involve evidence of ordinary crimes). In the context of acquisitions under Certification D, such concerns were weighty enough to render the government's procedures unreasonable under the Fourth Amendment. *Id.* at 64.[29]

[29] The Court anticipated, however, that the Certification D procedures could "be improved such that they sufficiently protect U.S.-person communications under the Fourth Amendment." *Id.* at 62. For example, the Court suggested revising the procedures "to reflect the necessity standard" for foreign intelligence information concerning U.S. persons "and include practical guidance on how to apply that standard." *Id.* The Court also stated that the heightened requirements for disseminating U.S.-person information that is not foreign intelligence information, but does constitute evidence of a drug crime, *see supra* pp. 28-29, should apply regardless of whether the crime involves a covered illicit drug. *Id.* at 63. Such a revision was expected to reduce the likelihood that such information is used "for ordinary crime control." *Id.*

The circumstances presented by acquisitions under the 2025 Certifications are materially different from those of Certification D and more closely resemble those of the amended 2024 Certifications.[30] Regarding acquisitions under the latter certifications, the Court observed that

> non-U.S. persons overseas who likely possess, receive or communicate foreign intelligence information described in § 1801(e)(1)(D) may not be targeted for acquisition unless such foreign intelligence information also concerns a foreign government [redacted] an international terrorist group, or activities pertaining to [redacted] Acquiring such information responds to concerns well beyond those of ordinary law enforcement.

Sept. 7, 2024 Op. at 72-73. That observation predated the Court being advised of the government's broad interpretation of § 1801(e)(1)(D), but it nevertheless applies to the 2025 Certifications. For example, it is now clear that the government regards information about [redacted] as potentially constituting § 1801(e)(1)(D) information, if "NSA reasonably believes that the intended use is for or will involve the production of illicit drugs." 2024-D DirNSA Aff. ¶ 6, at 3. Thus, the criteria for taskings to acquire § 1801(e)(1)(D) information under the 2025 Certifications are now known to be broader than had been apparent on the face of the amended 2024 Certifications and accompanying procedures. But it remains the case that the foreign intelligence information expected to be obtained by a tasking under one of the 2025 Certifications must concern an entity or activity that falls within one of the particular A, B or C subject matters, so that acquisitions under the 2025 Certifications are less likely than Certification D acquisitions to contain information concerning U.S. persons that does not qualify as foreign intelligence information or that constitutes evidence of ordinary crime. In the context of this case, therefore, the omissions in

[30] Amici acknowledge that, "applying the Court's precedential decisions," including the Court's approval of the procedures for the amended 2024 Certifications, the "procedures accompanying the 2025 Certifications also comport with the Fourth Amendment." Amici Br. at 10.

the procedures found to be problematic in the Certification-D Proceeding do not preclude a finding of reasonableness under the Fourth Amendment.[31]

Accordingly, the Court finds that the revised targeting, minimization, and querying procedures for each agency are consistent with the requirements of the Fourth Amendment.

VI. REVIEW OF THE PROCEDURES AS LIKELY TO BE IMPLEMENTED

In proceedings under Section 702(j), the FISC also evaluates whether the procedures are likely to be implemented in a manner consistent with statutory and Fourth Amendment requirements. As part of that evaluation, the Court examines implementation of current procedures, which can provide "indicia of how proposed procedures will be implemented" and therefore "be relevant to determining whether [they] comply with FISA's requirements." *In re DNI/AG 702(h) Certifications 2018*, 941 F.3d 547, 564 (FISCR 2019). Accordingly, the Court now turns to instances of noncompliance and the government's responses to them.

A. *FBI Querying Practices*

1. Recent Implementation of Querying Standard

After a series of reforms, some of which are codified in RISAA, the FBI seems to be improving its implementation of the general querying standard, which is set out above at page 25. Since the September 17, 2024 Opinion, NSD has reported on query reviews and training conducted

[31] The government may nonetheless opt to revise the procedures for the 2025 Certifications to adopt some or all of the revisions it may make in response to the findings of deficiency in the Certification D procedures. Greater consistency, for example, could simplify the rules for querying Section 702 data acquired under multiple certifications or streamline training efforts. The Court expects that procedures that cure the deficiencies respecting Certification D would likewise pass muster for Certifications A, B, and C.

in 17 FBI field divisions.[32] Chart 1 summarizes the results of these reviews regarding compliance with the querying standard. (As a baseline, approximately 1.8% of queries reviewed by NSD and summarized by the Court in April 2023 did not meet the querying standard, Docket Nos. 702(j)-23-01, 702(j)-23-02, 702(j)-23-03, Mem. Op. and Order at 85 (Apr. 11, 2023) ("Apr. 11, 2023 Op."); approximately 4.2% of queries reviewed by NSD and summarized in the April 4, 2024 Opinion did not meet the querying standard, Apr. 4, 2024 Op. at 38; and approximately 1.1% of queries reviewed by NSD and summarized in the September 17, 2024 Opinion did not meet the querying standard, Sept. 17, 2024 Op. at 81.)

[32] Notice of Compliance Incidents Relating to FBI Queries of Raw FISA-Acquired Info. Identified During an NSD Review of Queries Conducted by FBI's [redacted] Div. (Oct. 1, 2024) (similarly titled notices are cited in the form "Query Notice [division or FBI unit (date of filing)]"); Query Notice [redacted] (Oct. 16, 2024); Query Notice [redacted] (Nov. 7, 2024); Query Notice [redacted] (Nov. 13, 2024); Query Notice [redacted] (Nov. 15, 2024); Query Notice [redacted] (Nov. 15, 2024); Query Notice [redacted] (Nov. 15, 2024); Query Notice [redacted] (Dec. 10, 2024); Query Notice [redacted] (Dec. 17, 2024); Query Notice [redacted] (Dec. 17, 2024); Query Notice [redacted] (Jan. 23, 2025); Query Notice [redacted] (Jan. 24, 2025); Query Notice [redacted] (Jan. 24, 2025); Query Notice [redacted] (Jan. 27, 2025); Query Notice [redacted] (Jan. 29, 2025); Query Notice [redacted] (Feb. 11, 2025); Amended Query Notice [redacted] (Mar. 12, 2025).

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Chart 1 – FBI Querying Standard Errors (Division-Level Reviews)

Division	Date Range	Audited Queries including Section702 Data	Queries Not Meeting Standard
[redacted]	8/2023-10/2023	4,726	17 (.4%)
	10/2023-12/2023	1,468	18 (1.2%)
	11/2023-1/2024	345	1 (.3%)
	1/2024-3/2024	785	18 (2.3%)
	1/2024-3/2024	2,586	25 (1%)
	2/2024-4/2024	924	1 (.1%)
	2/2024-4/2024	2,609	12 (.5%)
	4/20/2024-6/20/2024	396	46 (11.6%)
	4/20/2024-7/20/2024	2,766	24 (.9%)
	4/20/2024-7/20/2024	240	2 (.8%)
	4/20/2024-7/20/2024	550	1 (.2%)
	5/2024-7/2024	0	0 (0%)
	5/2024-7/2024	61	0 (0%)
	5/2024-7/2024	1,351	1 (0%)
	6/2024-8/2024	182	1 (.5%)
	8/2024-10/2024	290	0 (0%)
	8/2024-10/2024	85	4 (4.7%)
TOTALS		**19,364**	**171 (0.9%)**

RISAA requires DOJ, within 180 days, to audit each U.S.-person query conducted by the FBI from the date of RISAA's enactment (April 20, 2024). RISAA § 2(c)(1)-(2), 138 Stat. at 863. Through March 14, 2025, the Court has received notices describing some 4,732 queries that were identified by the persons conducting them as U.S.-person or presumed U.S.-person queries and

reviewed by DOJ under this requirement.[33] Only 31 (.66%) of those queries failed to comply with the querying standard. (For the [redacted] Divisions, the number of audited queries stated in Chart 1 does not include queries reviewed by DOJ pursuant to this requirement.)

2. Records of Use of U.S.-Person Query Terms

The FBI must keep "a record . . . of each United States person query term used for a query" of raw Section 702 information. § 702(f)(1)(B). Some such records are inaccurate, either because a query term is recorded as pertaining to a U.S. person when it actually does not (sometimes called an "overmark") or because one is recorded as not pertaining to a U.S. person when it actually does (an "undermark"). In April 2024, the Court observed an apparent "reduction in the overall error rate" in such records, with the reviews discussed in the April 4, 2024 Opinion finding errors in approximately 2.3% of the queries examined, after having noted an error rate of approximately 5.7% in the reviews discussed in the April 11, 2023 Opinion. Sept. 17, 2024 Op. at 84 (internal quotation marks omitted). The queries examined in the reviews discussed in the September 17, 2024 Opinion were found to have an error rate of approximately 7.5%, albeit within a smaller sample with a disproportionate number of errors in a single field office. *Id.*

The government advises that in June 2024, FBI and NSD issued new guidance to FBI personnel for determining when a term is a U.S.-person query term and NSD's 2021 guidance

[33] *See* Notices of Compliance Incidents Relating to FBI Queries dated July 23, 2024, Aug. 16, 2024 (2 reports), Sept. 3, 2024, Sept. 4, 2024, Oct. 3, 2024, Oct. 29, 2024, Nov. 1, 2024 (4 reports), Nov. 5, 2024 (6 reports), Nov. 6, 2024, Nov. 13, 2024, Nov. 14, 2024, Nov. 15, 2024, Nov. 18, 2024, Dec. 3, 2024, Dec. 10, 2024 (as amended Jan. 30, 2025), Dec. 13, 2024, Dec. 17, 2024 (as amended Jan. 30, 2025), Dec. 26, 2024 (2 reports, both as amended Jan. 30, 2025), Jan. 27, 2025, Feb. 13, 2025 (3 reports), Feb. 27, 2025. The results of such reviews are also included in quarterly reports. *See, e.g.,* Quarterly Report to the FISC Under § 702 of FISA at 91-100 (Dec. 20, 2024) ("Dec. 2024 QR").

"regarding the query requirements and the proper interpretation and application of the query standard" is being updated. Jan. 17, 2025 Mem. at 12.

Each quarterly report on Section 702 compliance must include, among other things:

> (i) the number of U.S.-person queries run by the FBI against Section 702-acquired information; (ii) the number of instances in which it was determined that any agency incorrectly recorded a query as not involving a U.S.-person query term; (iii) the number of instances in which it was determined that any agency incorrectly recorded a query as involving a U.S.-person query term.

Sept. 17, 2024 Op. at 109. In December 2024, the government reported 2,275 U.S.-person queries, 56 undermarks, and 261 overmarks. Dec. 2024 QR at 101. Thirty-two of the undermarks pertained to "discovery-related evidence of a crime-only queries" and 113 of the overmarks were intentionally made "as part of system updates and testing." *Id.* nn.47-48. Even discounting for the 113 intentional overmarks, these numbers suggest that the FBI still needs to improve the accuracy of these records.

3. Reporting for Evidence-of-Crime-Only Queries and Batch Jobs

Under Section 702(f), as amended by RISAA, the FBI's procedures must prohibit queries "that are solely designed to find and extract evidence of criminal activity," § 702(f)(2)(A), with two narrow exceptions for "threat to life or serious bodily harm" or for litigation purposes, § 702(f)(2)(B). The notices cited in note 33 above describe 471 such queries recorded as using a U.S.-person query term and conducted in furtherance of criminal discovery obligations since the enactment of RISAA. They do not describe any such U.S.-person queries conducted under the exigent circumstances exception since the enactment of RISAA.

The government must also include in its quarterly reports

> a report of each instance in which FBI personnel queried unminimized Section 702-acquired information solely to find and extract evidence of criminal activity, including whether the query involved a U.S.-person query term and whether the user accessed Section 702-acquired contents information retrieved by such a query.

Sept. 17, 2024 Op. at 109. During September-November 2024, 348 queries were conducted solely for evidence of crime, and the user accessed unminimized contents retrieved by 62 such queries. Dec. 2024 QR at 101. The government stated that it was still gathering the additional information required. *Id.*

The Court has also ordered the government to report on a quarterly basis "the number of instances in which users stated that they had received approval from an FBI attorney to perform a batch job to query Section 702-acquired information; and . . . the number of instances in which users performed a batch job without prior approval from an FBI attorney." Sept. 17, 2024 Op. at 109. The updated results of that reporting are summarized in Chart 2 below. There is a slight uptick in the numbers of batch jobs since mid-2024. The Court is maintaining a modified form of these reporting requirements. *See infra* p. 52.

Chart 2 – FBI Reporting of Batch Jobs

Quarterly Report	Total Approved Batch Jobs	Emergency Batch Jobs Without Prior Approval
3/2022-5/2022	51	0
6/2022-8/2022	49	0
9/2022-11/2022	53	2
12/2022-2/2023	17	0
3/2023-5/2023	33	0
6/2023-8/2023	11	0
9/2023-11/2023	1	0
12/2023-2/2024	0	0
3/2024-5/2024	1	0
6/2024-8/2024	7	1
9/2024-11/2024	5	0

4. [redacted] Operations Found to Involve Queries

Previous opinions have discussed compliance issues arising from various standing alerts in an FBI system called [redacted] and their use to automatically place markings on products containing

raw Section 702 information. Operation of these alerts potentially involved queries. The resulting markings could result in retention of products for longer than permitted by the FBI's minimization procedures because automated protocols used to delete information may treat products marked for any purpose as having been reviewed by the FBI and therefore subject to a longer retention period.[34] April 4, 2024 Op. at 50-51; Sept. 17, 2024 Op. at 88-90. As of the September 17, 2024 Opinion, the government was still investigating whether automatic markings associated with one active alert – to "'Mark Empty Products'" for workflow management purposes – resulted in any noncompliance. *Id.* at 90. The government later reported that this alert might sometimes have marked as empty products that contained Section 702 information, *e.g.*, emails with no message in their body but content and/or non-content information in header fields, or chat products that [redacted] misidentified as empty because of changes in service providers' protocols for such communications. Supplemental Notice of Compliance Incidents Relating to FBI's Use of an Alert Function in [redacted] at 2-3 (Oct. 1, 2024). As of October 22, 2024, this alert type was deactivated. Final Notice of Compliance Incidents Relating to FBI's Use of an Alert Function in [redacted] at 2 (Dec. 23, 2024). Previously affixed markings of this type may have resulted in over-retention of raw Section 702 information, but the FBI does not know to what extent because it cannot determine what markings in [redacted] resulted from automated alerts. *Id.* at 2-3. Given the limited amount of data likely to have been retained in products marked as empty, this compliance problem appears unlikely to have substantially intruded on interests protected by statutory minimization requirements or the Fourth Amendment.

[34] The FBI is generally required to remove from electronic and data storage systems unreviewed raw Section 702 information five years from the expiration date of the certification under which the information was acquired. Current FBI Minimization Proc. § III.D.4.b, at 17.

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5. [redacted] Advanced Filter Function

> As of the September 17, 2024 Opinion, the government also was evaluating an
>
> 'advanced filter function' that allow[ed] [redacted] users to select a specific FBI casefile number or facility, using a drop-down menu or search bar, to review communications with targeted facilities. This functionality enable[d] users to select from lists of 'participants' in communication with targeted selectors and review communications of those participants. At least when using the drop-down menu, users [were] also presented with the number of times each 'participant' appear[ed] in the results.

Sept. 17, 2024 Op. at 90 n.67 (citations omitted). The Court ordered further reporting on the government's investigation of whether this function involved querying and, if so, whether querying requirements were satisfied. *Id.*

NSD ultimately reported that selecting participants in order to review their communications resulted in queries of raw information that included the participants' accounts as query terms, and did not merely involve the sorting of the results of previous queries or other operations. *See* Second Supplemental Notice Regarding [redacted] Participants Filter at 2-4 (Feb. 7, 2025). "NSD does not presently have access to historical data" that would allow it to determine whether such queries were compliant and is coordinating with FBI to assess what records of the use of this functionality may have been generated and maintained. *Id.* at 7 & n.8. At the direction of NSD, the FBI has deactivated this [redacted] "participants filter" tool. *See id.* at 8; Letter Regarding [redacted] Participants Filter (Mar. 10, 2025). If the FBI decides to reactivate the tool, it undertakes to notify the Court and explain how it will comply with applicable query requirements. *Id.* at 1.

B. *Querying and Dissemination Issues Presented by NSA [redacted] System*

[redacted] is an NSA system that [redacted] Sept. 17, 2024 Op. at 91 (internal quotation marks omitted). "NSA analysts can query Section 702 information on

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[redacted] using identifiers tasked [for collection] pursuant to Executive Order 12333 as query terms, without confirming that such queries satisfy NSA's querying standard." *Id.* (internal quotation marks omitted).

Deeming the government's response to previously imposed reporting requirements "insufficient," the Court ordered that, if the investigation was still ongoing at the time of the next report (due on October 1, 2024), the government must address "the feasibility of suspending use of [redacted] to query FISA data using Executive Order 12333-tasked identifiers as query terms." *Id.* at 92. In response, the government reported that it was still determining whether the definition of foreign intelligence in E.O. 12333,[35] as implemented, is consistent with FISA's definition of foreign intelligence information, *see supra* note 9, such that queries in [redacted] using E.O. 12333-tasked selectors as query terms would meet the standard to query Section 702 information. *See* Response to Court Order Regarding Compliance Incidents Involving Non-Compliant Queries at 4 (Oct. 1, 2024). The government also asserted that suspending [redacted] automated capability to search E.O. 12333-tasked selectors against Section 702 data "would significantly degrade NSA's ability to produce a complete SIGINT product." *Id.*

In December 2024, the government filed what purported to be a final notice, concluding that [redacted] querying capabilities are compliant. *See* Response to Court Order Regarding Compliance Incidents Involving Non-Compliant Queries at 4 (Dec. 27, 2024). The government acknowledged that the definition of foreign intelligence in E.O. 12333 is broader than the corresponding FISA definition, but asserted:

[35] E.O. 12333 defines "foreign intelligence" as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." E.O. 12333 § 3.5(e).

> [I]n practice, NSA is limited by executive branch policies in the type of foreign intelligence collected under E.O. 12333. . . . NSD and ODNI reviewed the executive branch policy documents, gathered additional information from NSA, and concluded that, as a practical matter, NSA's exercise of authority under E.O. 12333 pursuant to the . . . executive branch policy restrictions is aligned with the definition of foreign intelligence under FISA. Thus, the government assesses that . . . NSA's targeting pursuant to E.O. 12333 has been sufficiently circumscribed such that NSA's use of E.O. 12333-tasked selectors to query Section 702 collection would meet the "foreign intelligence element" of the query standard. Accordingly, the Government has concluded that there have not been potential non-compliant queries due to differences in the definition of "foreign intelligence" in FISA and E.O. 12333.

Id.

The Court does not think that conclusion is fully supported by the information provided and is requiring the government to provide additional information about the relevant policies and how following them is thought to ensure that the queries at issue comply with the three-part querying standard referenced above at page 25. *See infra* p. 55.

C. *Improper Retention by FBI*

The Court has previously noted "retention in [redacted] of an undetermined volume of information acquired under six Section 702 certifications from 2015 and 2016 in violation of" the retention limitation referenced above at note 34, apparently due to "a coding error in a [redacted] software update from November 2020." Sept. 17, 2024 Op. at 104 (internal quotation marks omitted). This error "inadvertently prevented automatic deletion of e-mail and chat records with no attachments." *Id.* at 105 (internal quotation marks omitted). "Overall, some 72,391,011 products were improperly retained, some of which had been acquired under Titles I and III of FISA and some under the affected Section 702 certifications." *Id.* As of the September 17, 2024 Opinion, the government had reported that "FBI personnel accessed and reviewed data from 951 Section 702 selectors after it should have been removed from [redacted] *Id.* The FBI had purged from [redacted] all of the over-retained products that had not been reviewed, but was retaining products that had

been reviewed, "with access to them restricted to technical personnel, for use in remediating the over-retention, e.g., in identifying for recall reports that include information from those products." *Id.*

In response to a Court-imposed reporting requirement, the government later advised that FBI personnel had accessed a total of 130,514 products, from all types of FISA collection, after they were due to have been deleted, resulting in 193 disseminations of over-retained information. *See* Update in Response to Court Order Regarding Compliance Incident Involving Retention of Raw FISA-Acquired Information at 3 (Dec. 23, 2024). (Specific information for Section 702 products was not provided.) FBI reported that it has purged all over-retained products, except for 380 that are "subject to a litigation hold or disseminated and will be deleted from [redacted] once the litigation hold is lifted or once the recall of the dissemination in the FBI's other systems has been completed." *Id.* The Court is maintaining a reporting requirement on this issue. *See infra* p. 55.

D. *Compliance Reporting Delays at NSA Due to Implementation of [redacted] System*

If NSA learns that a person currently targeted under Section 702 "is inside the United States, or if NSA concludes that a person who at the time of targeting was believed to be a non-United States person is believed to be a United States person," NSA will terminate acquisition from facilities used by such person "without delay" and report the incident to NSD, the ODNI OGC, and "the ODNI Civil Liberties Protection Officer within five business days." NSA Targeting Proc. § IV, at 10-11. "NSD reviews each of these incidents" and makes necessary inquiries to determine whether there was noncompliance. Dec. 2024 QR at 69.

On August 27, 2024, NSA began transitioning its compliance reporting to a system called [redacted] Preliminary Notice of Delayed Notification of Potential Compliance Incidents at 1 (Nov. 19, 2024) ("Nov. 19, 2024 Notice"). The transition caused "a significant increase in the

number of notification delays" under the above-referenced provision. *Id.* at 2. During June-August 2024, there were 63 late notifications involving approximately 22 targets, *id.* at 2 n.2, but during September-November 2024 – the first three calendar months after the transition – there were 889 cases of late notification,[36] involving approximately 231 targets, with an average reporting delay of approximately 11 business days. Dec. 2024 QR at 51. The government does "not assess that the transition has prevented NSA personnel" from making reports, "or caused an increase in tasking errors or detasking delays," Nov. 19, 2024 Notice at 2, only delayed notifications to NSD and ODNI. The government advises that it "continues to investigate this matter, including its causes, NSA's remediation efforts, and timeline for resolution." Dec. 2024 QR at 67. The Court is imposing a requirement to report on this matter. *See infra* p. 55.

E. ***User Activity Monitoring (UAM) Updates***

[redacted]

[36] In 828 of these cases, a tasked facility was found to be used in the United States or conflicting information about the location of a target could not be resolved. Dec. 2024 QR at 52. In the other 61 cases, a target was found to be a U.S. person. *Id.*

[redacted]

[redacted]

37 [redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Proper training could mitigate the risk of error or misuse of any Section 702 information resulting from broader access to UAM data, but [redacted] have not "recently" enforced the training requirements for access to UAM data that may contain raw Section 702 information[39] (though they plan to do so "going forward"). *See id.* at 17 n.15, 18 n.17.

The FBI reports that, "[i]n carrying out its UAM activities, [it] has not identified any instances in which unminimized FISA-acquired information has been recorded," though "it continues to assess that its UAM data records likely include at least some" such information. *Id.* at 19-20. Given the limited amount of raw Section 702 information likely to be recorded by UAM,

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38 [redacted]

39 [redacted]

and despite the FBI's noncompliance with training requirements, the agencies' UAM practices are consistent with finding that the querying and minimization procedures, as likely to be implemented, are consistent with statutory and Fourth Amendment requirements. The Court is retaining the biannual reporting requirement on UAM processes and requiring additional, prompt reporting on the FBI's failure to conduct the requisite raining and progress toward rectifying it. *See infra* p. 54.

F. *Update on Reports Containing Information Subject to a Purge Requirement*

The Court has previously discussed issues respecting the identification and recall of intelligence reports that, after dissemination, are assessed to contain Section 702 information subject to a purge requirement. *See, e.g.*, Apr. 4, 2024 Op. at 68-70. The framework for administering such recalls was laid out in a policy memorandum, referred to as ICPM 200 (01). *Id.* at 68. The Court has required reporting on these issues. *See, e.g.*, Sept. 17, 2024 Op. at 110.

ODNI now advises that, as a result of prior consultations and guidance, Intelligence Community (IC) "elements are aware of when a FISA-compliance recall notice is required and what steps a recipient" of such a notice must take. Report in Response to Court's Mem. Op. and Order Dated Sept. 17, 2024 at 14 (Feb. 14, 2025) ("Feb. 14, 2025 Recall Report"). It is further reported that "each IC element is positioned to ensure implementation of appropriately rigorous policies, procedures, and systems for issuing and responding to" such notices. *Id.* at 15. They agencies are continuing "to develop an outreach strategy to the recipients of disseminated intelligence products, outside of FBI, NSA, CIA, and NCTC, to ensure comprehensive ICPM 200 (01) compliance. These efforts are ongoing." *Id.* at 16. In addition,

> ODNI is currently investigating systems that are not primarily repositories for reporting, but that may potentially contain information from FISA-compliance recall reports, and considering whether there are reasonable practices or processes to enable identification and removal of recalled information from such systems.

> The Government is working to confirm that each agency's systems are fully capable of tracking recalls in various scenarios to ensure that there are no gaps in ICPM 200 (01) compliance.

Id at 17. The Court directs further reporting on these matters at *See infra* p. 54.

G. *Other Compliance Incidents*

The Court continuously monitors compliance incidents reported to it. In most respects, the Court views as reasonable the agencies' efforts to mitigate compliance problems reported since the September 17, 2024 Opinion and to guard against their recurrence. When it has questions or concerns about compliance reporting, the Court does not hesitate to obtain additional information or direct particular remedial measures.[40]

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After examining the compliance issues reported and the government's responses thereto, as well as the compliance and oversight mechanisms in place, the Court on balance finds that the procedures submitted with the 2025 Certifications, as likely to be implemented, comply with applicable statutory and Fourth Amendment requirements.

VII. CONCLUSION

For the foregoing reasons, the Court finds that:

(1) The 2025 Certifications, as well as the certifications in the Prior 702 Dockets, as amended by the 2025 Certifications, contain all the required elements;

[40] Pursuant to a separate order, the government continues to update the Court on a compliance matter [redacted] but there have been no noteworthy developments since the September 17, 2024 Opinion. *See* Sept. 17, 2024 Op. at 96-100; Docket Nos. 702(j)-21-01, 702(j)-21-02, 702(j)-21-03, 702(j)-23-01, 702(j)-23-02, 702(j)-23-03, Order Respecting Retention, Use, and Disclosure of Information at 13 (Feb. 12, 2024). The Court is also maintaining a reporting requirement on the investigation of [redacted] discussed in that Opinion. *See* Sept. 17, 2024 Op. at 100-102; *infra* p. 55.

(2) The targeting procedures for acquisitions conducted pursuant to the 2025 Certifications are consistent with the requirements of Section 702(d) and the Fourth Amendment;

(3) With respect to information acquired under the 2025 Certifications, the minimization procedures are consistent with the requirements of Section 702(e) and the Fourth Amendment;

(4) With respect to information acquired under the 2025 Certifications, the querying procedures are consistent with the requirements of Section 702(f)(1) and the Fourth Amendment;

(5) With respect to information acquired under the certifications in the Prior 702 Dockets, as amended, the minimization procedures are consistent with the requirements of Section 702(e) and the Fourth Amendment; and

(6) With respect to information acquired under DNI/AG 702(h) Certification 2018-A, DNI/AG 702(h) Certification 2018-B, DNI/AG 702(h) Certification 2018-C, DNI/AG 702(h) Certification 2019-A, DNI/AG 702(h) Certification 2019-B, DNI/AG 702(h) Certification 2019-C, DNI/AG 702(h) Certification 2020-A, DNI/AG 702(h) Certification 2020-B, DNI/AG 702(h) Certification 2020-C, DNI/AG 702(h) Certification 2021-A, DNI/AG 702(h) Certification 2021-B, DNI/AG 702(h) Certification 2021-C, DNI/AG 702(h) Certification 2023-A, DNI/AG 702(h) Certification 2023-B, DNI/AG 702(h) Certification 2023-C, DNI/AG 702(h) Certification 2024-A, DNI/AG 702(h) Certification 2024-B, and DNI/AG 702(h) Certification 2024-C, the querying procedures are consistent with the requirements of Section 702(f)(1) and the Fourth Amendment. (The Court does not make an equivalent finding regarding the other certifications in the Prior 702 Dockets because Section 702(f), "as added by paragraph (1)" of section 101(a), only applies "with respect to certifications submitted under [Section 702(h)] to the Foreign Intelligence Surveillance Court after January 1, 2018." FISA Amendments Reauthorization Act of 2017 § 101(a)(2), Pub. L. 115-118, 132 Stat. 3, 6 (2018).) Accordingly,

IT IS HEREBY ORDERED AS FOLLOWS:

(1) The government's submissions are approved, as set out below:

a. The 2025 Certifications and the certifications in the Prior 702 Dockets, as amended, are approved;

b. The use of the targeting procedures for acquisitions conducted pursuant to the 2025 Certifications is approved; and

c. With respect to information acquired under the 2025 Certifications and the certifications in the Prior 702 Dockets, the use of the minimization procedures and querying procedures is approved;

(2) Separate orders memorializing the dispositions described above are being entered contemporaneously herewith pursuant to Section 702(j)(3)(A);

(3) The government shall adhere to the following requirements (prospectively, the government is hereby relieved of any reporting requirements imposed by FISC opinions and orders issued in the Prior 702 Dockets under Section 702(j) that are not reiterated below):

a. Raw information obtained by NSA's upstream Internet collection under Section 702, including information [redacted] discussed herein, shall not be provided to the FBI, CIA or NCTC unless done pursuant to revised minimization procedures that are adopted by the AG and DNI and submitted to the FISC for review in conformance with Section 702;

b. On or before December 31 of each calendar year, the government shall submit a written report to the FISC describing (a) all administrative-, civil-, or criminal-litigation matters necessitating preservation by the FBI, NSA, CIA, or NCTC of Section 702-acquired information that would otherwise be subject to destruction, including the docket number and court or agency

in which such litigation matter is pending; (b) the Section 702-acquired information preserved for each such litigation matter; and (c) the status of each such litigation matter;

c. The government shall promptly submit a written report describing each instance in which an agency invokes the provision of its minimization or querying procedures exempting responses to congressional mandates, as discussed in Docket Nos. 702(j)-18-01, 702(j)-18-02, 702(j)-18-03, Memorandum Opinion and Order at 106-110 (Oct.18, 2018), *aff'd in part*, *In re DNI/AG 702(h) Certifications 2018*, 941 F.3d 547 (FISCR 2019). Each such report shall describe the circumstances of the deviation from the procedures and identify the specific mandate on which the deviation was based;

d. The government shall include in each quarterly report on Section 702 compliance matters a report of each instance in which FBI personnel queried unminimized Section 702-acquired information solely to find and extract evidence of criminal activity, including whether the query involved a U.S.-person query term. The report shall address whether each such query was consistent with the statute and applicable procedures. Each quarterly report shall also include: (i) the number of U.S.-person queries run by the FBI against Section 702-acquired information; (ii) the number of instances in which it was determined that any agency incorrectly recorded a query as not involving a U.S.-person query term; (iii) the number of instances in which it was determined that any agency incorrectly recorded a query as involving a U.S.-person query term; (iv) the number of instances in which FBI personnel stated that they had received approval from an FBI attorney to perform a batch job to query Section 702-acquired information; and (v) the number of instances in which FBI personnel performed a batch job without prior approval from an FBI attorney;

e. The government shall continue to report on its [redacted] collection under Section 702 on a quarterly basis. These reports shall: (i) describe the intended targets of each [redacted] (ii) explain how the government is ensuring that it will only acquire communications to or from a Section 702 target [redacted] and (iii) describe methods the government is using to monitor compliance with the abouts prohibition [redacted] and report on the results of such monitoring;

f. No later than ten days after tasking for upstream collection under Section 702 a [redacted] the government shall submit a notice that: (i) describes the [redacted] (ii) explains how [redacted] will comply with the prohibition on acquiring abouts communications; and (iii) describes steps that will be taken during the course of the proposed acquisition to ensure that [redacted] is only acquiring communications that are to or from an authorized Section 702 target;

g. On or before December 31 of each year, the government shall report: (i) the number of Section 702-acquired products disseminated or disclosed to the National Center for Missing and Exploited Children (NCMEC); and (ii) the number of disseminations or disclosures by the NCMEC to other law-enforcement entities of Section 702-acquired information;

h. Prior to implementing changes to policies or practices concerning (i) the release of Section 702-acquired information from the NCMEC to Interpol's International Child Sexual Exploitation database or (ii) approval to use in any proceeding Section 702-acquired information disseminated to the NCMEC, the government shall submit a report describing such changes and

explaining why they are consistent with applicable minimization procedures and statutory minimization requirements;

i. The government shall submit an update by January 30, 2026, describing: (i) further steps taken or to be taken by the FBI, NSA, CIA, and NCTC to implement internal policies, procedures, and systems for issuing and responding to FISA-compliance recall notices; (ii) steps taken or to be taken to develop a strategy for outreach to recipients of disseminated intelligence products, outside of FBI, NSA, CIA, and NCTC, to ensure comprehensive compliance with ICPM 200 (01); (iii) describing oversight mechanisms being used to ensure such compliance; and (iv) describing any incidents of noncompliance, including an update on ODNI's investigation of agency systems described at page 17 of the February 14, 2025 Recall Report;

j. The requirement to provide an update to each agency's UAM submission shall remain in effect, with the next report due on March 5, 2027, and subsequent reports due at two-year intervals thereafter. In addition, the government shall submit a report by June 1, 2025, addressing the causes of the FBI's failure to conduct the training required for personnel with access to UAM data that may contain raw Section 702 information and describing efforts to complete that training. If the training is not completed by June 1, 2025, the government shall file subsequent reports at 90-day intervals thereafter until it is completed;

k. No later than ten days after the NCTC Director delegates authority to any Group Chief or official within the Directorate of Identity Intelligence to make the determination required under NCTC Minimization Proc. § D.3.b., at 12, the government shall submit a notice: (i) identifying the individual to whom the delegation was made; (ii) describing the duties of such individual; and (iii) explaining the reason(s) for, and the scope and duration of, such delegation;

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l. The government shall promptly report: (i) any change to the requirement that Section 702 information be reviewed by a human analyst before it is disseminated by NSA, *see* Apr. 4, 2024 Op. at 55 n.31; and (ii) any discovery of a dissemination by NSA of Section 702 information without prior review by an analyst, notwithstanding such requirement;

m. The government shall submit its next written update by May 1, 2025, regarding retention of Section 702-acquired information after it was required to be destroyed by the FBI in [redacted] for reasons other than a litigation hold. *See supra* pp. 42-43. If the investigation and any remedial measures are not completed at the time of such written submission, the government shall submit written updates at 90-day intervals thereafter;

n. The government shall submit a report by May 1, 2025, (i) addressing whether it is possible for U.S.-person identifiers to be treated as E.O. 12333 selectors in the context of use as query terms in queries conducted on [redacted]; and (ii) explaining the basis for the conclusion that executive branch policy constraints on E.O. 12333 targeting ensure compliance with all three elements of the querying standard stated at NSA Querying Proc.§ IV.A, at 4;

o. By June 1, 2025, and every ninety days thereafter until resolved, the government shall provide written updates regarding its investigation and remediation of the reporting delays occasioned by NSA's transition to [redacted], including a timeline for resolution;

p. [redacted]

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q. [redacted] *see supra* note 10, NSA's post-tasking review shall include periodic examination of information recently obtained [redacted] and

r. The government shall file a description of any of the following occurrences:

(a) NSA comes to believe that (i) [redacted] (ii) [redacted]

(b) NSA comes to believe that a [redacted]

(c) NSA comes to believe that [redacted]

Such descriptions shall be submitted within ten days of the applicable occurrence and shall describe the government's response thereto and assess any statutory or Fourth Amendment issues presented.

ENTERED this 18th day of March, 2025.

ANTHONY J. TRENGA
Presiding Judge, United States
Foreign Intelligence Surveillance Court

I, [redacted] Deputy Clerk, FISC, certify that this document is a true and correct copy of the original. [redacted]