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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[redacted]

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MEMORANDUM OPINION

On [redacted] the government filed an application seeking authority to conduct electronic surveillance of communications intended [redacted]

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[redacted]

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The key question for the Court is whether the activities proposed by the government constitute electronic surveillance or physical search under the Foreign Intelligence Surveillance Act (FISA). The government contends that the [redacted] constitutes electronic surveillance specifically under Section 1801(f)(4), which reads:

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(f) "Electronic surveillance" means—

...

(4) the installation of use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

A "physical search" under FISA means:

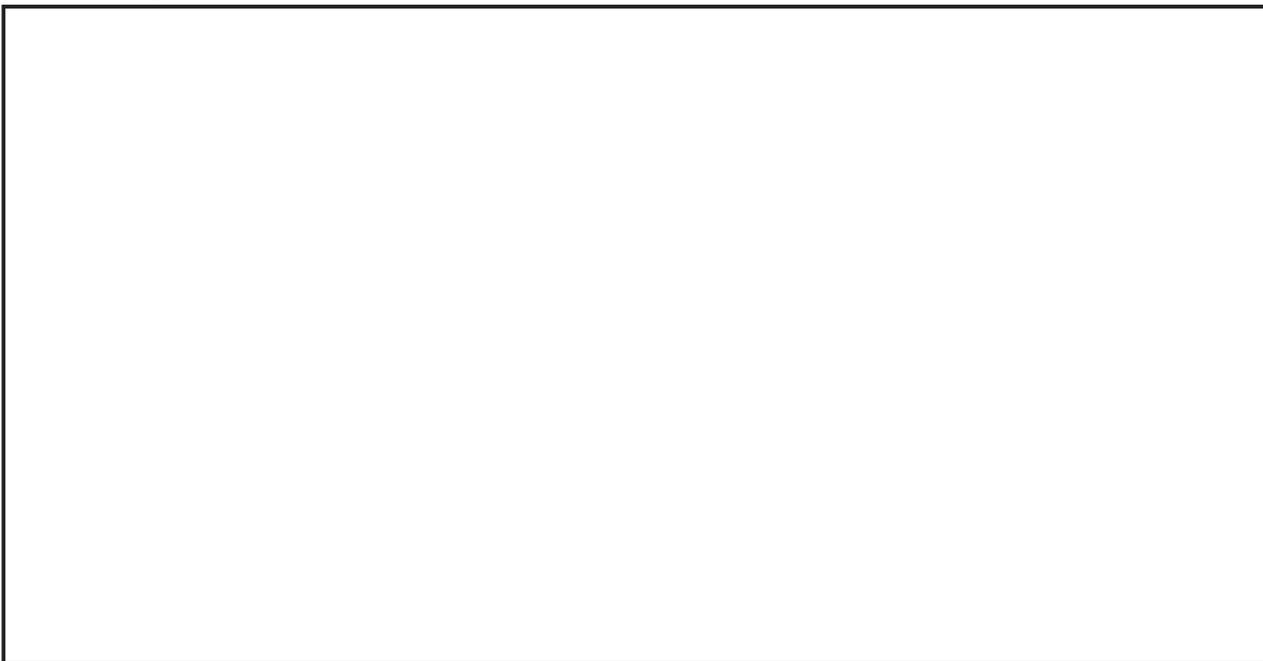
any physical intrusion within the United States into premises or property ... that is intended to result in a seizure, reproduction, inspection, or alteration of information, material or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include

(A) "electronic surveillance", as defined in section 1801(f) of this title....

50 U.S.C. § 1821(5).¹ The definition of "physical search" specifically does not include anything that could be defined as "electronic surveillance" under Section 1801(f). Therefore, the Court agrees with the government that if the proposed activities constitute electronic surveillance under Section 1801(f), then they cannot constitute a physical search. (See Mem. of Law at 12 n.16.)



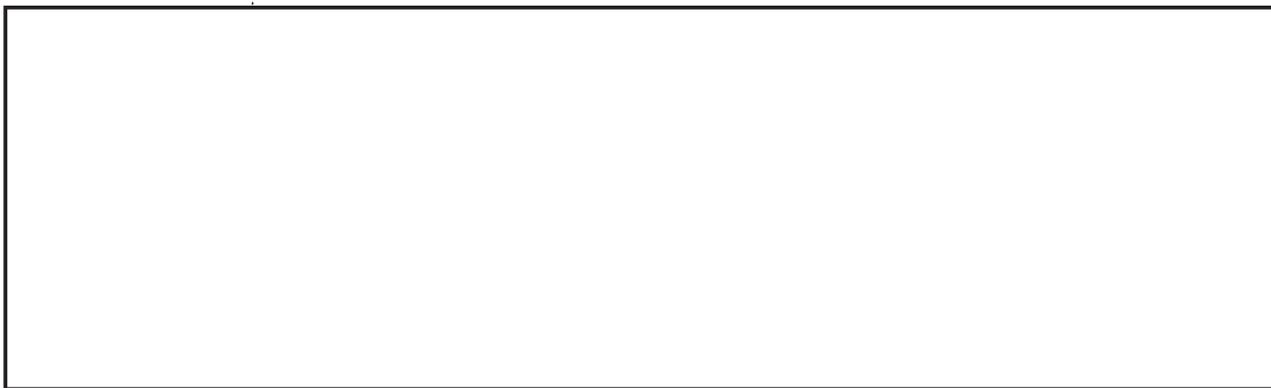
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³ The Court, in deciding this matter, does not reach the government's argument regarding the use of the term "intercept" or "interception" as used in the FISA legislative history or in Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Mem. of Law at 13-16. First, the term is not used in the definition of "electronic surveillance" under FISA's Section [redacted] and where a particular term is provided the Court should endeavor to define that term.

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Conclusion



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Martin L.C. Feldman
MARTIN L.C. FELDMAN
Judge, United States Foreign
Intelligence Surveillance Court

Chief Deputy
Clerk, FISC, certify that this document
is a true and correct copy of the
original

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