All redacted information exempt under (b)(1), (b)(3), and (b)(7)(E).

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KAREN E. SUTTON, CLERK
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U.S. Foreign Intelligence Surveillance Court

~~SECRET COMINT//X1~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

IN RE ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH OF INTERNATIONAL TERRORIST GROUPS, THEIR AGENTS, AND RELATED TARGETS. ~~(S)~~	Docket Numbers: Multiple [redacted]

MOTION FOR AMENDED ORDERS PERMITTING MODIFIED MINIMIZATION PROCEDURES

By this motion, the United States seeks amended orders in the above-referenced cases to permit the implementation of modified minimization procedures, under which the Central Intelligence Agency (CIA) and the National Security Agency (NSA) will be permitted to receive raw data from Court-authorized electronic surveillance and physical search; minimize such data pursuant to the minimization procedures specified herein; and retain and disseminate foreign intelligence information so obtained. The instant motion applies to surveillances and

Classified by: James A. Baker, Counsel for Intelligence Policy, U.S. Department of Justice
Reason: 1.5(c)
~~Declassify on: X1~~

searches conducted by the Federal Bureau of Investigation (FBI) targeting: (1) foreign powers as defined at 50 U.S.C. § 1801(a)(4); (2) agents of such foreign powers; and (3) other targets where the search or surveillance is reasonably expected to yield foreign intelligence information related to international terrorism.[1] However, granting the instant motion will not apply the modified minimization procedures proposed herein to the surveillances and/or searches referenced in paragraph 16 below. ~~(S)~~

In support of this motion, the United States states as follows: (U)

The Current International Terrorism Threat (U)

1. On September 14, 2001, the President of the United States declared that a national emergency has existed since September 11, 2001, "by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States." (U)

2. On September 15, 2001, upon the motion of the Government, the Court suspended the "Court wall," certification,

[1] [redacted] (S)

and caveat requirements that previously had applied to Court-authorized electronic surveillance and physical search of [redacted] related targets, while directing that the FBI continue to apply the standard minimization procedures applicable in each case. As stated in the order resulting from that motion, the Court took this action in light of, inter alia:

> "the President's September 14, 2001, declaration of a national emergency and the near war conditions that currently exist;"
>
> "the personal meeting the Court had with the Director of the FBI on September 12, 2001, in which he assured the Court of the substantial foreign intelligence purpose of the collection authority requested from this Court in the face of the nature and scope of the multi-faceted response of the United States to the above-referenced attacks;" and
>
> "the need for the Government to rapidly disseminate pertinent foreign intelligence information to appropriate authorities."

~~(S)~~

3. On September 24, 2001, the President issued Executive Order No. 13,224, which authorized the Department of the Treasury to freeze the U.S. assets of, and prohibit U.S. persons from conducting transactions with, Usama Bin Laden, his key lieutenants, al Qaeda and related terrorist organizations, as well as entities that are known to provide financial and

operational support to al Qaeda. In so doing, the President found

> that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, ... and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, *and in furtherance of my proclamation of* September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat.

(U)

Procedures Now Governing NSA and CIA Assistance (S)

4. Many of the above-captioned applications, particularly those that have been made to this Court since the terrorist attacks of September 11, 2001, contain special minimization procedures permitting the CIA, NSA, and other federal agencies to provide technical and linguistic assistance to the FBI with respect to the results of Court-authorized electronic surveillance or physical search. When NSA or CIA has provided technical or linguistic assistance pursuant to these special minimization procedures currently in use, NSA or CIA employees usually have been detailed to the FBI for the purpose of providing such assistance. Once detailed, such CIA or NSA employees have functioned as FBI employees under FBI supervision

and control. When detailed or otherwise, NSA or CIA employees who receive access to raw data[2] from FISA surveillances and searches pursuant to these special minimization procedures currently in use do so solely for the purpose of providing technical or linguistic assistance to the FBI. They do not retain, disseminate or make any other use of such data on behalf of NSA or CIA, unless and until the FBI disseminates information to the CIA or NSA pursuant to the FBI's standard minimization procedures. Thus, information from FBI FISA collection informs CIA or NSA intelligence reports, analyses, and assessments on international terrorism, or CIA and NSA targeting and other operational decisions, **only** if and when it is disseminated to CIA or NSA pursuant to the FBI's standard minimization procedures. ~~(S)~~

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[2] Under its standard minimization procedures, the FBI is required to take certain steps to minimize the acquisition of non-foreign intelligence information. See, e.g., Section 3(c) of the procedures for electronic surveillance of a U.S. person agent of a foreign power [redacted]

The use of the phrase "raw data" is not meant to suggest otherwise. [redacted] ~~(S)~~

Modified Procedures Proposed in this Motion (U)

5. Under the modified minimization procedures proposed herein, the CIA and NSA would be permitted to receive raw data acquired by the FBI from FISA surveillances and searches; to minimize such information pursuant to the minimization procedures proposed herein for each agency; and to retain and disseminate[3] foreign intelligence information consistent with such minimization procedures. Under the modified minimization procedures, CIA and NSA would be permitted to receive raw data from Court-authorized electronic surveillance and physical search from the FBI, but would **not** be permitted to acquire such information from Court-authorized electronic surveillance or physical search independently.[4] Thus, the modified minimization procedures contemplate that, at the acquisition stage,

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[3] As used in this motion and the proposed NSA and CIA procedures, "dissemination" by CIA or NSA refers to any disclosure (except among NSA, CIA, and FBI personnel as described in paragraph 12 below) by CIA or NSA to a recipient who is not a CIA or NSA employee, contractor, agent or asset. ~~(S)~~

[4] Under Executive Order No. 12,333 (with exceptions that generally do not apply to the surveillances or searches subject to this motion), CIA is not permitted to conduct electronic surveillance or physical searches within the United States, and NSA is not authorized to conduct physical searches. Of course, as the Court is aware, NSA conducts its own Court-authorized electronic surveillances within the United States. ~~(S)~~

surveillances and searches would continue to be conducted solely by the FBI, without direct involvement of the CIA or NSA.[5] ~~(S)~~

If the Court grants this motion, it is anticipated that in some instances the FBI will continue to minimize and disseminate the foreign intelligence information from FISA surveillance or search of some targets. In some such instances, NSA and CIA may provide technical or linguistic assistance to the FBI, as previously approved by the Court. In other circumstances, CIA or NSA may take primary responsibility for processing, minimizing, and disseminating FISA collection from a particular target. If this motion is granted, in instances in which the CIA and NSA engage in further analysis of foreign intelligence information FBI initially has minimized and disseminated from raw data that would be subject to this motion, CIA and NSA also may make further disseminations in accordance with paragraph 9(b) of this motion (applicable to CIA and NSA), paragraphs 8(6) and 8(7) of this motion (applicable to NSA), and/or paragraphs 4(e) and 4(f)

[5] Where warranted by particular operational circumstances, personnel from CIA or NSA have been, and will continue to be, detailed to the FBI in order to provide technical support to the acquisition stage of a specific FISA collection. Personnel on such details are solely under FBI direction and do not report to CIA or NSA on the results of such collection, unless directed to do so by FBI and consistent with applicable minimization procedures. ~~(S)~~

of Exhibit A hereto (applicable to CIA). Thus, by granting this motion the Court will provide the United States maximum flexibility to determine the appropriate application of intelligence community resources to FISA collection directed against international terrorist targets. ~~(S)~~

In support of these modified minimization procedures, the United States submits: (U)

First, the Attorney General, as defined at 50 U.S.C. § 1801(g), has adopted these modified minimization procedures, by virtue of approval of the filing of the instant motion. (U)

Second, these modified minimization procedures satisfy the requirement of the above-referenced statutory definitions that minimization procedures be

> "**reasonably designed in light of the purpose and technique of the particular surveillance** [or physical search], to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning United States persons **consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.**"

50 U.S.C. § 1801(h)(1) (electronic surveillance) and § 1821(4)(A) (physical search) (emphasis added). Under the current circumstances, the foreign intelligence purposes of the above-captioned surveillances and searches encompass the detection and thwarting of planned attacks, such as those of September 11,

2001, as well as the provision of foreign intelligence information to the President and other national security decision-makers regarding how the United States might respond to such attacks through diplomatic, military, law enforcement, and/or intelligence activities. **Timely translation, decryption, analysis, assessment, and dissemination of foreign intelligence information is essential to these purposes. Under the current circumstances, the need for expedition and thoroughness in these processes is especially acute.** Congress recognized this need when it enacted Section 901 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (USA PATRIOT Act), Pub. L. No. 107-56, which amended 50 U.S.C. § 403-3(c) to provide that the Director of Central Intelligence, in his capacity as head of the Intelligence Community, shall "provide assistance to the Attorney General **to ensure that information derived from electronic surveillance or physical searches under [FISA] is disseminated so it may be used efficiently and effectively for foreign intelligence purposes**, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance or physical search operations pursuant to [FISA] unless otherwise

authorized by statute or executive order" (emphasis added). Accordingly, the United States submits that it is reasonable to authorize the immediate application of all of its analytical resources to meet the prevailing need to produce and disseminate foreign intelligence information related to international terrorism, rather than permitting CIA and NSA substantive analysis to commence only after minimization, assessment, and dissemination by the FBI. Thus, the CIA and NSA should have the same ability as the FBI to produce and disseminate appropriately minimized foreign intelligence information from the raw data obtained from FISA surveillances and searches. Moreover, authorizing CIA and NSA to process raw FBI FISA data will enhance the ability of the United States to employ effectively its overseas collection capabilities against the terrorist targets.[6] (S)

[redacted]

Third, these modified minimization procedures satisfy the requirement of the statutory definitions that minimization procedures

> "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 person's consent, **unless such person's identity is necessary to understand foreign intelligence information or assess its importance.**"

50 U.S.C. § 1801(h)(2) (electronic surveillance); § 1821(4)(B) (physical search) (emphasis added). As explained above, there are compelling reasons for the CIA and NSA to participate fully in the process whereby the United States timely identifies foreign intelligence information, assesses its importance, and ensures that appropriate action based on that intelligence can be taken. Such full participation requires CIA and NSA initially to receive United States person-identifying information as part of the raw FISA-obtained data. In applying the minimization procedures proposed herein, the CIA or NSA shall appropriately minimize United States persons' identities. ~~(S)~~

Fourth, the remaining requirements of the statutory definitions of minimization procedures at 50 U.S.C. § 1801(h) and § 1821(4) are satisfied by the CIA and NSA minimization procedures proposed herein. ~~(S)~~

Fifth, because the CIA and NSA are intelligence agencies with no law enforcement authorities, the significant foreign intelligence purpose of these searches and surveillances will not be adversely affected by permitting CIA and NSA to receive the raw results of FISA collection and to disseminate information from such collection under the procedures proposed herein. Indeed, providing such raw data to these intelligence agencies reflects the significant foreign intelligence purpose of these collection activities. ~~(S)~~

FBI Processing Under Modified Procedures (U)

6. Under the modified minimization procedures, the FBI will be permitted to provide promptly to the CIA and NSA raw data from Court-authorized surveillances and searches for further processing by CIA and NSA. The FBI will also provide to the CIA and NSA the identity of the target(s) of the surveillance or search from which raw data is being provided; a statement of whether each target was identified as a U.S. person, a non-U.S. person, or a presumed U.S. person in the relevant Court pleadings or orders; a statement of what categories of non-pertinent communications and/or special or particularized minimization procedures, if any, were provided for in such pleadings or

order(s);[7] and, where applicable, a statement that the target, or any other person whose communications with an attorney are likely to be acquired through surveillance or search of the target, is known by the FBI to be under indictment.[8] Otherwise, the FBI's authorities regarding its handling of FISA information will not change: as it is currently, the FBI will be authorized to review such raw data, and to log, index, retain, and disseminate foreign intelligence information or evidence of crime consistent with its applicable standard minimization procedures, as well as any special or particularized minimization procedures that may apply to a particular surveillance or search. ~~(S)~~

CIA Processing Under Modified Procedures ~~(S)~~

7. Under the modified minimization procedures, the CIA will be permitted direct access to raw data from Court-authorized

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[7] The FBI may provide this information by giving to NSA or CIA a copy of the relevant pleadings and/or resulting orders, or of the relevant pages thereof. ~~(S)~~

[8] If the FBI knows that a target or other such person is under indictment, but is prevented from disclosing that fact to CIA or NSA because of a sealing order or other legal restriction, the FBI shall not provide to CIA or NSA raw data that may include attorney-client communications of the person known to be under indictment, unless and until the matter is resolved on a case-specific basis (e.g., by having a sealing order modified so that FBI may identify the indicted person to CIA and NSA, or by presenting modified, target-specific minimization procedures to this Court). ~~(S)~~

surveillances and searches. After receiving such data from the FBI, the CIA will follow the minimization procedures set out in Exhibit A hereto in its subsequent processing, retention, and dissemination of that data and information therefrom. The minimization procedures set out in Exhibit A are adapted from procedures, approved by the Attorney General and in effect in their current form since 1987, for CIA retention and dissemination of information from non-FISA electronic surveillance, including surveillance targeting United States persons abroad pursuant to Attorney General authorization under Section 2.5 of Executive Order No. 12,333.[9] CIA analysts are already familiar with these non-FISA procedures through training and years of experience. Thus, the United States submits that, to the extent permitted by law, CIA's application of the same standards and procedures to the raw FISA data obtained from the FBI can be expected to result in greater consistency and quality of minimization. However, since these non-FISA procedures reflect a broader definition of foreign intelligence (e.g., by including information about international narcotics activities, as such) than FISA provides in its definition of "foreign

[9] These procedures are contained in Appendix D to the Attorney General-approved Guidance for CIA Activities Conducted Outside the United States. (U)

intelligence information" at 50 U.S.C. § 1801(e), the categories of information that may be retained and disseminated under the procedures in Exhibit A have been narrowed from those provided in the CIA's non-FISA minimization procedures. Provisions have also been added at Paragraph 4 of the procedures at Exhibit A to address issues of heightened concern in the context of surveillances and searches within the United States (e.g., the handling of attorney-client communications). Finally, in applying these procedures, CIA expects to follow its customary practice for dissemination under Executive Order No. 12,333 and its implementing procedures regarding sanitization of U.S. person identities. This practice consists of generic substitution. Where the identity is believed necessary to understand, assess, or act on the foreign intelligence information, the identity is provided. ~~(S)~~

NSA Processing Under Modified Procedures ~~(S)~~

8. Under the modified minimization procedures, the NSA also will be permitted direct access to raw data from Court-authorized surveillances and searches. After receiving such data from the FBI, the NSA will follow its own standard FISA minimization

procedures,[10] with the modifications set out hereinbelow, in its subsequent processing, retention, and dissemination of that data and information therefrom. These standard FISA minimization procedures have been in effect in their current form since 1997. As is the case with the CIA and its own procedures, NSA analysts are already trained and experienced in these NSA FISA procedures, so that their application to the raw FISA data obtained from the FBI can be expected to result in greater consistency and quality of minimization. Certain provisions of these NSA FISA procedures are directed solely to how information may be acquired, and thus will have no application to the NSA's processing of raw FISA results it obtains from the FBI after acquisition has taken place. See, e.g., Sections 3(a), (b) and 4(a). Additionally, NSA will observe the following in applying these NSA FISA procedures to raw data from FISA searches and surveillances conducted by the FBI:

(1) References to Court-authorized electronic surveillance shall be understood to include Court-authorized physical search.

(2) References to any provision of 50 U.S.C. §§ 1801-1811 pertaining to Court-authorized electronic surveillance shall be understood to include a

[10] A copy of NSA's current standard minimization procedures for its own FISA collection is at Exhibit B. ~~(S)~~

corresponding provision of 50 U.S.C. §§ 1821-1829 pertaining to Court-authorized physical search.

(3) References to "communications" shall be understood to include non-communications information obtained by Court-authorized search or surveillance.

(4) The following will be added to the end of Section 3(f) of these NSA FISA procedures: "(7) OIPR shall periodically determine that information concerning communications of or concerning United States persons that is retained meets the requirements of these procedures and the Foreign Intelligence Surveillance Act."

(5) The following will be added to the end of Section 4(b) of these NSA FISA procedures: "With respect to any other communication where it is apparent to NSA processing personnel that the communication is between a person and the person's attorney (or someone acting on behalf of the attorney) concerning legal advice being sought by the former from the latter, such communications relating to foreign intelligence information may be retained and disseminated within the U.S. Intelligence Community if the communications are specifically labeled as being privileged. However, such communications may not be disseminated outside of the U.S. Intelligence Community without the prior approval of OIPR."

(6) The following will replace subsections (a), (b), and (c) of Section 8: "Nonpublicly available identity or personally identifiable information concerning United States persons may be disseminated to foreign governments, provided that:

(a) the information to be disseminated is foreign intelligence information; and

(b) the dissemination is approved by the Attorney General or approved pursuant to such procedures as the Attorney General may establish for the dissemination of such information by NSA."

(7) Regarding dissemination of evidence of a crime, Sections 5(a)(2) and 6(b)(8) will be superceded by the following:

> "Information that is not foreign intelligence information, but reasonably appears to be evidence of a crime that has been, is being, or is about to be committed, may be disseminated (including United States person identities) to the FBI and other appropriate federal law enforcement authorities, in accordance with 50 U.S.C. §§ 1806(b) and 1825(c), Executive Order No. 12,333, and, where applicable, the crimes reporting procedures set out in the August 1995 'Memorandum of Understanding: Reporting of Information Concerning Federal Crimes,' or any successor document." ~~(S)~~

(8) NSA will also apply the following procedures:

a. [redacted]

b. [redacted]

c. Notwithstanding that the NSA standard procedures were drafted to address only surveillances, and do not expressly address the processing of non-communications information, information concerning U.S. persons that is found in non-communications information from Court-

> authorized surveillances or searches conducted by the FBI may be retained or disseminated, but only in accordance with the standards applicable to retention and dissemination of foreign communications of or concerning U.S. persons in Section 6 of those standard NSA procedures.

Further, in applying these procedures, NSA expects to follow its customary practice of substituting in its disseminated reports a generic description for a U.S. person identity, even if that identity could appropriately be disseminated as necessary to a full understanding of foreign intelligence information. In such cases, NSA's usual practice is to provide the U.S. person's identity to a recipient of the report who specifically requests that identity in order to understand fully the disseminated foreign intelligence information. ~~(S CCO)~~

Further Provisions Regarding CIA and NSA Processing (S)

9. In applying their respective minimization procedures, as described in paragraphs 7 and 8 above, to data from Court-authorized surveillances and searches conducted by the FBI, CIA and NSA will also:

> (a) apply any special or particularized minimization procedures identified by the FBI to CIA and NSA, in accordance with paragraph 6 above, as applicable to a particular surveillance or search. As described in their respective minimization procedures at Exhibits A and B, CIA and NSA will also apply any categories of non-pertinent communications so identified by the FBI to CIA and NSA (and NSA shall apply such categories

instead of those listed in Section 3(f)(6) of the NSA standard FISA minimization procedures); and

(b) regard as U.S. persons any targets identified by the FBI to CIA and NSA as U.S. persons or presumed U.S. persons, in accordance with paragraph 6 above; provided, however, that if CIA or NSA, based on analysis of data from Court-authorized surveillances and searches conducted by the FBI and/or other available information, determines that a target identified by the FBI as a presumed U.S. person is properly regarded as a non-U.S. person, CIA or NSA may treat that target as a non-U.S. person for minimization purposes, and shall promptly notify the FBI and the Office of Intelligence Policy and Review (OIPR), United States Department of Justice, of such determination. For example, NSA or CIA may determine that a target identified by the FBI as a presumed U.S. person is properly regarded as a non-U.S. person upon a finding that the target is located outside of the United States, unless NSA or CIA possess specific indications that the target is a U.S. person.

Neither NSA nor CIA will be responsible for maintaining record copies of the raw data received from the FBI pursuant to this motion. ~~(S CCO)~~

Dissemination by NSA and CIA (U)

10. Disseminations by CIA or NSA of information from FBI Court-authorized electronic surveillance or physical searches to other Federal entities will bear a legend substantively identical to the following:

"ORCON FISA INFORMATION: This dissemination includes FBI information from FBI FISA collection. Such information, and any information derived therefrom, may only be used in a U.S. legal or administrative proceeding with the advance authorization of the

Attorney General.[11] Any recipient interested in obtaining authorization for such use in a U.S. legal or administrative proceeding should contact FBI Headquarters.[12] Any further dissemination outside of intelligence channels and/or for law enforcement purposes must be made through FBI Headquarters. Any reproduction, dissemination, or communication (including, but not limited to, oral briefings) of this information must be accompanied by a statement of these restrictions."

~~(S)~~

11. Wherever feasible, CIA and NSA will indicate which portions of documents contain information from FBI FISA collection, so that recipients of those documents, both within and outside of CIA and NSA respectively, can determine the information to which FISA-specific restrictions apply. ~~(S)~~

12. It is anticipated that CIA and NSA will disseminate foreign intelligence information from FBI FISA collection to the full range of Federal offices and agencies with responsibilities relating to international terrorism to which CIA and NSA now

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[11] The applicable statutory text requires advance authorization of the Attorney General for use in criminal proceedings, see 50 U.S.C. §§ 1806(b) and 1825(c), but the practice of successive Attorneys General has been to require authorization for use in other (e.g., immigration) proceedings also. (U)

[12] While a recipient interested in obtaining Attorney General authorization for use in a proceeding is directed to contact FBI Headquarters, it is anticipated that FBI Headquarters will consult with OIPR about obtaining the required Attorney General approval. ~~(S)~~

disseminate terrorism-related foreign intelligence from other sources. Depending on the content of a particular report, its recipients could include law enforcement agencies within the Department of Justice (e.g., the Immigration and Naturalization Service) or in other departments (e.g., the Secret Service), as well as the Criminal Division of the Department of Justice. NSA and CIA will simultaneously include FBI Headquarters in dissemination of foreign intelligence information to any Federal law enforcement agency and/or the Criminal Division of the Department of Justice. NSA and CIA will not disseminate foreign intelligence information obtained or derived from FBI FISA collection directly to any United States Attorney's Office; however, NSA or CIA may disseminate foreign intelligence information to (or otherwise call it to the attention of) FBI Headquarters, so that FBI may consider whether to disseminate such information to a United States Attorney's Office pursuant to procedures applicable to the FBI. ~~(S)~~

NSA and CIA, under their respective procedures, will also be authorized to disseminate evidence of a crime that may not be foreign intelligence information, pursuant to applicable crimes reporting procedures. See NSA procedures at paragraph 8, subparagraph (7) above; proposed CIA procedures at paragraph

4(f).[13] NSA and CIA will copy FBI Headquarters on all crimes reporting containing information from FBI FISA collection, and will also copy OIPR on crimes reporting to the Criminal Division of the United States Department of Justice that contains such information. ~~(S)~~

13. Some of the international terrorism applications to which this motion applies contain special "wall" procedures governing how the FBI discloses or disseminates information to criminal investigators or prosecutors. Generally, these special "wall" procedures require approval of such disclosures or disseminations by one or more specified officials or offices within the FBI and/or the Department of Justice; [redacted] The instant motion will not affect the FBI's

[13] The current memorandum of understanding (MOU) regarding crimes reporting by intelligence agencies, including the CIA and NSA, states:

> "This MOU ordinarily does not require an intelligence agency or organization to report crimes information that was collected and disseminated to it by another department, agency, or organization. Where, however, the receiving agency is the primary or sole recipient of this information, or if analysis by the receiving agency reveals additional crimes information, the receiving agency shall be responsible for reporting all such crimes information in accordance with the provisions of this MOU." (U)

implementation of such procedures, as they now are in effect or in whatever form they may be approved in the future. For the following reasons, the Government submits that such "wall" procedures should not apply to disseminations by NSA or CIA pursuant to the instant motion. ~~(S)~~

Most of these "wall" procedures were implemented before the enactment of the USA PATRIOT Act and were designed to ensure over time that FBI surveillances and searches continued to be conducted in furtherance of a primary foreign intelligence purpose.[14] In some circumstances, an unregulated flow of FISA information by FBI special agents conducting an intelligence investigation to FBI criminal investigators and/or prosecutors was thought to involve a risk that, in fact or appearance, the FISA collection was primarily serving law enforcement, rather than foreign intelligence, objectives. The disseminations to Federal law enforcement agencies or prosecutors that NSA or CIA

[14] As the Court is aware, FISA as recently amended by the USA PATRIOT Act now requires certification that "a significant purpose" of the surveillance or search is to obtain foreign intelligence information, 50 U.S.C. §§ 1804(a)(7)(B) & 1823(a)(7)(B), and expressly authorizes consultation and coordination between Federal law enforcement officers and officers conducting FISA surveillances and searches, in order "to investigate or protect against . . . actual or potential attack or other gave hostile acts" and "international terrorism" by foreign powers and agents of foreign powers. Id. §§ 1806(k) & 1825(k). (U)

may make pursuant to this motion would not present the same risk. In any dissemination by, or related interaction with, NSA or CIA, neither the prosecutors nor the agents in other law enforcement agencies would have an opportunity to direct or control Court-authorized surveillance or search, because the FBI will continue to be the agency conducting the surveillance or search. ~~(S)~~

Similarly, the Attorney General has approved procedures for the sharing of information from FBI intelligence investigations with criminal prosecutors. As the Court is aware, these procedures were submitted to the Court by a motion dated March 7, 2002. By an order dated April 22, 2002, the Court found that those procedures, modified in part, satisfied the definition of minimization procedures under FISA. These procedures, both as originally submitted and as modified by the Court, are directed solely at **FBI** dissemination of information to, and contacts with, the Criminal Division and United States Attorney's Offices. For the reasons stated above, the Government submits that no such procedures should be extended to the CIA or NSA. Of course, contacts between prosecutors and the FBI agents responsible for FISA collection will continue to be governed by procedures directed at the FBI. ~~(S)~~

Scope of the Modified Procedures (U)

14. Nothing in the minimization procedures proposed herein shall be understood to authorize the CIA or NSA (i) to acquire data through Court-authorized electronic surveillance or physical search, other than by receiving from the FBI data acquired by the FBI through such electronic surveillance or physical search; or (ii) to assume law enforcement or internal security authorities or responsibilities of the FBI. The FBI, in coordination with CIA or NSA, may decide to target particular foreign powers or their agents based upon information provided by CIA or NSA. In addition, employees of the FBI, CIA, and/or NSA may work together in the review and analysis of raw data provided by the FBI to CIA and NSA pursuant to this motion (for example, to collaborate on linguistic questions; to confer on minimization-related issues; or to provide assistance from technical personnel). Such sharing of information and analysis among the FBI, CIA, and/or NSA shall not, in and of itself, be regarded as "dissemination" by CIA or NSA under the minimization procedures described herein. CIA, NSA, and FBI may also determine that they can most effectively deploy their collective expertise and resources by having one agency take primary responsibility for the analysis and

dissemination of information from FISA collection regarding particular targets. ~~(S)~~

15. This motion shall apply to raw data obtained by the FBI from the above-referenced searches or surveillances since January 1, 2001. Additionally, where there is an articulable reason to believe that CIA's or NSA's receiving raw data from the above-referenced searches or surveillances that was obtained by the FBI prior to such date may further important foreign intelligence interests of the United States, CIA or NSA may also receive such raw data pursuant to the procedures described herein. Finally, it is expected that CIA or NSA will receive raw data from the above-referenced searches and surveillances when Court authority is renewed for the above-referenced searches and surveillances, as well as when authority to initiate FISA collection regarding new international terrorism targets is obtained. In cases where the Government intends to implement the procedures described herein, renewal and initial applications to this Court shall expressly reference such procedures. ~~(S)~~

16. Notwithstanding the foregoing, the instant motion will not permit CIA and NSA to have access to raw data from electronic surveillances or physical searches authorized in docket numbers providing for special minimization procedures for potentially

privileged information. [redacted] [redacted] ~~(S)~~

Imminent Danger to Life (U)

17. Where a person's life or physical safety is reasonably believed to be in imminent danger, and information is relevant to the danger or its prevention, reduction, or elimination, **nothing in this motion or the proposed procedures shall prohibit the CIA or NSA** from:

a. retaining such information for a period of time sufficient to respond to such danger.

b. disseminating such information to any Federal officer or agency with responsibility for the matter. FBI Headquarters shall be simultaneously included in any such dissemination and notified of the other recipients of the disseminated information; however, if NSA or CIA reasonably believes that a simultaneous dissemination to FBI Headquarters would impede a sufficiently timely dissemination in response to the danger, dissemination to FBI Headquarters may be made as soon as possible after the initial dissemination.

c. making such other disseminations as reasonably may be necessary to respond to such danger, except that when practicable, any such disseminations within the United States shall be made in coordination with the FBI.

~~(S)~~

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[15] However, the Government in the future may present to the Court modified case-specific minimization procedures that would permit CIA and NSA to have access to raw data from such electronic surveillances and physical searches. ~~(S)~~

Report to Court (U)

18. Within 180 days of the implementation of the modified minimization procedures proposed herein, the United States will report to the Court on how such procedures are being implemented, and on any revisions that may be appropriate. ~~(S)~~

WHEREFORE, the United States respectfully requests that the Court issue the proposed order attached to this motion. (U)

Respectfully submitted,

James A. Baker
Counsel for Intelligence Policy
U.S. Department of Justice

VERIFICATION

I have reviewed the foregoing motion and the minimization procedures set out at Exhibit A. The CIA will follow those minimization procedures, as described in the foregoing motion, with respect to information obtained from Court-authorized electronic surveillance and physical search of the above-captioned targets. ~~(S)~~

John E. McLaughlin
Deputy Director of Central Intelligence

VERIFICATION

I have reviewed the foregoing motion and the NSA minimization procedures described therein. The NSA will follow those minimization procedures, as described in the foregoing motion, with respect to information obtained from Court-authorized electronic surveillance and physical search of the above-captioned targets. ~~(S)~~

Michael V. Hayden
Lieutenant General, USAF
Director, National Security Agency

VERIFICATION

I have reviewed the foregoing motion and the minimization procedures described therein. The FBI will follow those minimization procedures applicable to the FBI, described in the foregoing motion, with respect to information obtained from Court-authorized electronic surveillance and physical search of the above-captioned targets. ~~(S)~~

Robert S. Mueller, III
Director, Federal Bureau of Investigation

APPROVAL

I find that this motion regarding electronic surveillance and physical search of international terrorist groups, their agents, and related targets satisfies the criteria and requirements set forth in the Foreign Intelligence Surveillance Act of 1978, and hereby approve its filing with the United States Foreign Intelligence Surveillance Court. ~~(S)~~

/John Ashcroft
John Ashcroft
Attorney General of the United States

MAY 10 2002

Date

FILED
KAREN E. SUTTON, CLERK

MAY 10 2002

U.S. Foreign Intelligence Surveillance Court

~~SECRET//X1~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D. C.

IN RE ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH OF INTERNATIONAL TERRORIST GROUPS, THEIR AGENTS, AND RELATED TARGETS. ~~(S)~~	:	Docket Numbers: Multiple [redacted]

ORDER

This matter having come before the Court on the motion of the United States for amended orders to modify the minimization procedures in the above-captioned matters, the Court finds that the modified minimization procedures proposed in such motion have been adopted by the Attorney General, as defined under 50 U.S.C. § 1801(g), and meet the definition of minimization procedures under 50 U.S.C. §§ 1801(h) and 1821(4); and, such motion being well-founded, it is hereby GRANTED.

~~SECRET//X1~~

Derived from: Motion of the United States in the above-captioned matters.
~~Declassify on: X1~~

FILED
KAREN E. SUTTON, CLERK
MAY 10 2002
U.S. Foreign Intelligence
Surveillance Court

All other provisions of those orders shall remain in effect as originally granted or modified by prior order of this Court.

_____ _____
Date Filed Time Filed

_____ _____
Date Approved Time Approved

_____
Judge, United States Foreign
Intelligence Surveillance Court

_____

[redacted]

I, Karen E. Sutton, Clerk,
FISC, certify that this document
is a true and correct copy
of the original.