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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

_____))
IN RE DNI/AG CERTIFICATION 2010-A.))
_____))

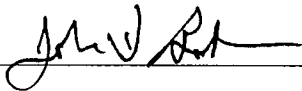
Docket Number 702(i)-10-02

ORDER

For the reasons stated in the Memorandum Opinion issued contemporaneously herewith, and in reliance on the entire record in this matter, the Court finds, in the language of 50 U.S.C. § 1881a(i)(3)(A), that the certification submitted in the above-captioned docket, as amended, “contains all the required elements and that the [amended] targeting and minimization procedures adopted in accordance with [50 U.S.C. § 1881a(d)-(e)] are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States.”

Accordingly, it is hereby ORDERED, pursuant to 50 U.S.C. § 1881a(i)(3)(A), that such certification, as amended, and the use of such procedures, as amended, are approved.

ENTERED this 19th day of August 2010.



JOHN D. BATES
Judge, United States Foreign
Intelligence Surveillance Court

I, Beverly C. Queen, Deputy Clerk,
FISC, certify that this document
is a true and correct copy of
the original.



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CERTIFICATION OF THE DIRECTOR OF NATIONAL INTELLIGENCE AND THE
ATTORNEY GENERAL PURSUANT TO SUBSECTION 702(g) OF THE FOREIGN
INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED

IN THE MATTER OF FOREIGN GOVERNMENTS, FOREIGN FACTIONS, FOREIGN
ENTITIES, AND FOREIGN-BASED POLITICAL ORGANIZATIONS

DNI/AG 702(g) Certification 2010-A

Based on the representations made in the supporting affidavits of General Keith B. Alexander, United States Army, Director of the National Security Agency (NSA), Leon E. Panetta, Director, Central Intelligence Agency (CIA), and Robert S. Mueller, III, Director, Federal Bureau of Investigation (FBI), in the above-referenced matter, the Director of National Intelligence and the Attorney General, being duly sworn, hereby certify that: (S//OC,NF)

- (1) there are procedures in place that will be submitted with this certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to --
 - a. ensure that an acquisition authorized pursuant to subsection 702(a) of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"), is limited to targeting persons reasonably believed to be located outside the United States; and
 - b. prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;
- (2) the minimization procedures with respect to such acquisition --
 - a. meet the definition of minimization procedures under subsections 101(h) and 301(4) of the Act; and

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Classified by: The Attorney General
Reason: 1.4(c)
Declassify on: 15 July 2035

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- b. will be submitted with this certification for approval by the Foreign Intelligence Surveillance Court;
- (3) guidelines have been adopted in accordance with subsection 702(f) of the Act to ensure compliance with the limitations in subsection 702(b) of the Act and to ensure that an application for a court order is filed as required by the Act;
- (4) the procedures and guidelines referred to in sub-paragraphs (1), (2), and (3) above are consistent with the requirements of the fourth amendment to the Constitution of the United States;
- (5) a significant purpose of the acquisition is to obtain foreign intelligence information;
- (6) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and
- (7) the acquisition complies with the limitations in subsection 702(b) of the Act. (S)

As described in the above-referenced affidavit of General Alexander, the foreign intelligence information to be acquired pursuant to this certification concerns foreign powers as defined in 50 U.S.C. § 1801(a)(1) ("foreign governments or any components thereof, whether or not recognized by the United States"); 50 U.S.C. § 1801(a)(2) ("factions of foreign nations, not substantially composed of United States persons"); 50 U.S.C. § 1801(a)(3) ("entities openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments"); 50 U.S.C. § 1801(a)(5) ("foreign-based political organizations, not substantially composed of United States persons"); and 50 U.S.C. § 1801(a)(6) ("entities directed and controlled by a foreign government or governments"). A list of foreign powers satisfying these statutory definitions is attached herewith as Exhibit F. If NSA seeks to acquire foreign intelligence information concerning additional foreign powers as defined in

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50 U.S.C. § 1801(a)(1), (2), (3), (5), or (6), NSA may target consistent with this certification non-United States persons reasonably believed to be located outside the United States who possess, are expected to receive, and/or are likely to communicate foreign intelligence information concerning those additional foreign powers, provided that NSA notifies the Attorney General and Director of National Intelligence within five business days of implementing such targeting. Such notification will include a description of the factual basis for NSA's determination that the additional government, faction, entity, or political organization is a foreign power as defined in 50 U.S.C. § 1801(a)(1), (2), (3), (5), or (6). (S//OC,NF)

On the basis of the foregoing, the targeting of non-United States persons reasonably believed to be located outside the United States to acquire foreign intelligence information, as described above, is authorized, and such authorization shall be effective on August 17, 2010, or on the date upon which the Foreign Intelligence Surveillance Court issues an order pursuant to subsection 702(i)(3) of the Act, whichever is later. Such targeting is authorized for a period of one year from the effective date of this authorization. This authorization reauthorizes DNI/AG 702(g) Certification 2009-A ("In the Matter of Foreign Governments, Foreign Factions, Foreign Entities, and Foreign-Based Political Organizations"), which was authorized by the Director of National Intelligence and Attorney General pursuant to section 702(g) of the Act on July 29, 2009. (S//OC,NF)

Amendment 1 to DNI/AG 702(g) Certifications 2008-A and 2009-A

Furthermore, in accordance with subsection 702(i)(1)(C) of the Act, the NSA, FBI, and CIA minimization procedures authorized for use under DNI/AG 702(g) Certifications 2008-A and 2009-A are hereby amended. Specifically, the use of the NSA, FBI, and CIA minimization procedures attached herewith as Exhibits B, D, and E, respectively, in connection with foreign

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intelligence information acquired in accordance with DNI/AG 702(g) Certifications 2008-A and 2009-A is authorized.¹ Such authorization shall be effective on August 17, 2010, or on the date upon which the Foreign Intelligence Surveillance Court issues an order concerning these amendments pursuant to subsection 702(i)(3) of the Act, whichever is later. (S//OC,NF)

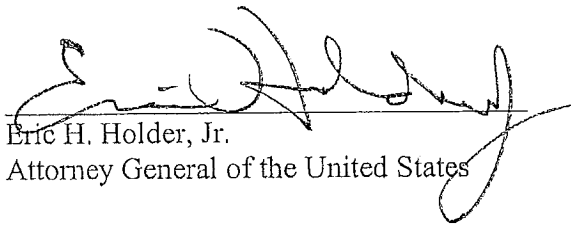
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¹ As certified above, these minimization procedures meet the definition of minimization procedures under subsections 101(h) and 301(4) of the Act and will be submitted herewith for approval by the Foreign Intelligence Surveillance Court. (S//OC,NF)

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VERIFICATION (U)

I declare under penalty of perjury that the facts set forth in the foregoing certification in the Matter of Foreign Governments, Foreign Factions, Foreign Entities, and Foreign-Based Political Organizations, DNI/AG 702(g) Certification 2010-A, are true and correct to the best of my knowledge and belief. I further declare under penalty of perjury that the facts set forth in the foregoing amendments to the minimization procedures to be used in connection with foreign intelligence information acquired in accordance with DNI/AG 702(g) Certifications 2008-A and 2009-A are true and correct to the best of my knowledge and belief. Executed pursuant to 28 U.S.C. § 1746 on July 15, 2010. (S)




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

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VERIFICATION (U)

I declare under penalty of perjury that the facts set forth in the foregoing certification in the Matter of Groups Engaged in International Terrorism or Activities in Preparation Therefor, DNI/AG 702(g) Certification 2010-B, are true and correct to the best of my knowledge and belief. I further declare under penalty of perjury that the facts set forth in the foregoing amendment to the minimization procedures to be used in connection with foreign intelligence information acquired in accordance with DNI/AG 702(g) Certifications 2008-B and 2009-B are true and correct to the best of my knowledge and belief. Executed pursuant to 28 U.S.C. § 1746 on July 15, 2010. (S)



David C. Gompert
Acting Director of National Intelligence

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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

EXHIBIT A

PROCEDURES USED BY THE NATIONAL SECURITY AGENCY FOR TARGETING
NON-UNITED STATES PERSONS REASONABLY BELIEVED TO BE LOCATED
OUTSIDE THE UNITED STATES TO ACQUIRE FOREIGN INTELLIGENCE
INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE
SURVEILLANCE ACT OF 1978, AS AMENDED

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CLERK OF COURT

(S) These procedures address: (I) the manner in which the National Security Agency/Central Security Service (NSA) will determine that a person targeted under section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"), is a non-United States person reasonably believed to be located outside the United States ("foreignness determination"); (II) the post-targeting analysis done by NSA to ensure that the targeting of such person does not intentionally target a person known at the time of acquisition to be located in the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States; (III) the documentation of NSA's foreignness determination; (IV) compliance and oversight; and (V) departures from these procedures.

I. (U) DETERMINATION OF WHETHER THE ACQUISITION TARGETS NON-UNITED STATES PERSONS REASONABLY BELIEVED TO BE LOCATED OUTSIDE THE UNITED STATES

(S) NSA determines whether a person is a non-United States person reasonably believed to be outside the United States in light of the totality of the circumstances based on the information available with respect to that person, including information concerning the communications facility or facilities used by that person.

(S) NSA analysts examine the following three categories of information, as appropriate under the circumstances, to make the above determination: (1) they examine the lead information they have received regarding the potential target or the facility that has generated interest in conducting surveillance to determine what that lead information discloses about the person's location; (2) they conduct research in NSA databases, available reports and collateral information (i.e., information to which NSA has access but did not originate, such as reports from other agencies and publicly available information) to determine whether NSA knows the location of the person, or knows information that would provide evidence concerning that location; and (3) they conduct technical analyses of the facility or facilities to determine or verify information about the person's location. NSA may use information from any one or a combination of these categories of information in evaluating the totality of the circumstances to determine that the potential target is located outside the United States.

(TS//SI) In addition, in those cases where NSA seeks to acquire communications about the target that are not to or from the target, NSA will either employ an Internet Protocol filter to ensure that the person from whom it seeks to obtain foreign intelligence information is located

Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20320108

overseas, or it will target Internet links that terminate in a foreign country. In either event, NSA will direct surveillance at a party to the communication reasonably believed to be outside the United States.

(S) Lead Information

(S) When NSA proposes to direct surveillance at a target, it does so because NSA has already learned something about the target or the facility or facilities the target uses to communicate. Accordingly, NSA will examine the lead information to determine what it reveals about the physical location of the target, including the location of the facility or facilities being used by the potential target.

(S) The following are examples of the types of lead information that NSA may examine:

- a) Has the target stated that he is located outside the United States? For example, has NSA or another intelligence agency collected a statement or statements made by the target indicating that he is located outside the United States?
- b) Has a human intelligence source or other source of lead information indicated that the target is located outside the United States?
- c) Does the lead information provided by an intelligence or law enforcement agency of the United States government or an intelligence or law enforcement service of a foreign government indicate that the target is located outside the United States?
- d) Was the lead information about the target found on a hard drive or other medium that was seized in a foreign country?
- e) With whom has the target had direct contact, and what do we know about the location of such persons? For example, if lead information indicates the target is in direct contact with several members of a foreign-based terrorist organization or foreign-based political organization who themselves are located overseas, that may suggest, depending on the totality of the circumstances, that the target is also located overseas.

(S) Information NSA Has About the Target's Location and/or Facility or Facilities Used by the Target

(S) NSA may also review information in its databases, including repositories of information collected by NSA and by other intelligence agencies, as well as publicly available information, to determine if the person's location, or information providing evidence about the person's location, is already known. The NSA databases that would be used for this purpose contain information culled from signals intelligence, human intelligence, law enforcement information, and other sources. For example, NSA databases may include a report produced by the Central Intelligence Agency (CIA) with the fact that a known terrorist is using a telephone with a particular number, or detailed information on worldwide telephony numbering plans for wire and wireless telephone systems.

(S) NSA Technical Analysis of the Facility

(S) NSA may also apply technical analysis concerning the facility from which it intends to acquire foreign intelligence information to assist it in making determinations concerning the location of the person at whom NSA intends to direct surveillance. For example, NSA may examine the following types of information:

(S) For telephone numbers:

- a) Identify the country code of the telephone number, and determine what it indicates about the person's location.
- b) Review commercially available and NSA telephone numbering databases for indications of the type of telephone being used (e.g. landline, wireless mobile, satellite, etc.), information that may provide an understanding of the location of the target.

(S) For electronic communications accounts/addresses/identifiers:

Review NSA content repositories and Internet communications data repositories (which contain, among other things, Internet communications metadata) for previous Internet activity. This information may contain network layer (e.g., Internet Protocol addresses) or machine identifier (e.g., Media Access Control addresses) information, which NSA compares to information contained in NSA's communication network databases and commercially available Internet Protocol address registration information in order to determine the location of the target.

(S) Assessment of the Non-United States Person Status of the Target

(S) In many cases, the information that NSA examines in order to determine whether a target is reasonably believed to be located outside the United States may also bear upon the non-United States person status of that target. For example, lead information provided by an intelligence or law enforcement service of a foreign government may indicate not only that the target is located in a foreign country, but that the target is a citizen of that or another foreign country. Similarly, information contained in NSA databases, including repositories of information collected by NSA and by other intelligence agencies, may indicate that the target is a non-United States person.

(S) Furthermore, in order to prevent the inadvertent targeting of a United States person, NSA maintains records of telephone numbers and electronic communications accounts/addresses/identifiers that NSA has reason to believe are being used by United States persons. Prior to targeting, a particular telephone number or electronic communications account/address/identifier will be compared against those records in order to ascertain whether NSA has reason to believe that telephone number or electronic communications account/address/identifier is being used by a United States person.

(S) In the absence of specific information regarding whether a target is a United States person, a person reasonably believed to be located outside the United States or whose location is not known will be presumed to be a non-United States person unless such person can be positively identified as a United States person, or the nature or circumstances of the person's communications give rise to a reasonable belief that such person is a United States person.

(S) Assessment of the Foreign Intelligence Purpose of the Targeting

(S) In assessing whether the target possesses and/or is likely to communicate foreign intelligence information concerning a foreign power or foreign territory, NSA considers, among other things, the following factors:

a. With respect to telephone communications:

- Information indicates that the telephone number has been used to communicate directly with another telephone number reasonably believed by the U.S. Intelligence Community to be used by an individual associated with a foreign power or foreign territory;
- Information indicates that a user of the telephone number has communicated directly with an individual reasonably believed by the U.S. Intelligence Community to be associated with a foreign power or foreign territory;
- Information indicates that the telephone number is listed in the telephone directory of a telephone used by an individual associated with a foreign power or foreign territory;
- Information indicates that the telephone number has been transmitted during a telephone call or other communication with an individual reasonably believed by the U.S. Intelligence Community to be associated with a foreign power or foreign territory;
- Publicly available sources of information (e.g., telephone listings) match the telephone number to an individual reasonably believed by the U.S. Intelligence Community to be associated with a foreign power or foreign territory;
- Information contained in various NSA-maintained knowledge databases containing foreign intelligence information acquired by any lawful means, such as electronic surveillance, physical search, or the use of a pen register and trap or trace device, or other information, reveals that the telephone number has been previously used by an individual associated with a foreign power or foreign territory;¹ or

¹ (TS//SI//NF) The NSA knowledge databases that would be used to satisfy this factor contain fused intelligence information concerning international terrorism culled from signals intelligence, human intelligence, law enforcement information, and other sources. The information compiled in these databases is information that assists the signals intelligence system in effecting collection on intelligence targets. For example, a report produced by the CIA may include the fact that a known terrorist is using a telephone with a particular number. NSA would include that information in its knowledge databases.

- Information made available to NSA analysts as a result of processing telephony metadata records acquired by any lawful means, such as electronic surveillance, physical search, or the use of a pen register or trap and trace device, or other information, reveals that the telephone number is used by an individual associated with a foreign power or foreign territory.
- b. With respect to Internet communications:
- Information indicates that the electronic communications account/address/identifier has been used to communicate directly with an electronic communications account/address/identifier reasonably believed by the U.S. Intelligence Community to be used by an individual associated with a foreign power or foreign territory;
 - Information indicates that a user of the electronic communications account/address/identifier has communicated directly with an individual reasonably believed to be associated with a foreign power or foreign territory;
 - Information indicates that the electronic communications account/address/identifier is included in the "buddy list" or address book of an electronic communications account/address/identifier reasonably believed by the U.S. Intelligence Community to be used by an individual associated with a foreign power or foreign territory;
 - Information indicates that the electronic communications account/address/identifier has been transmitted during a telephone call or other communication with an individual reasonably believed by the U.S. Intelligence Community to be associated with a foreign power or foreign territory;
 - Public Internet postings match the electronic communications account/address/identifier to an individual reasonably believed by the U.S. Intelligence Community to be associated with a foreign power or foreign territory;
 - Information contained in various NSA-maintained knowledge databases of foreign intelligence information acquired by any lawful means, such as electronic surveillance, physical search, the use of a pen register or trap and trace device, or other information, reveals that electronic communications account/address/identifier has been previously used by an individual associated with a foreign power or foreign territory;
 - Information made available to NSA analysts as a result of processing metadata records acquired by any lawful means, such as electronic surveillance, physical search, or the use of a pen register or trap and trace device, or other information, reveals that the electronic communications account/address/identifier is used by an individual associated with a foreign power or foreign territory; or
 - Information indicates that Internet Protocol ranges and/or specific electronic identifiers or signatures (e.g., specific types of cryptology or steganography) are used almost exclusively by individuals associated with a foreign power or foreign territory,

or are extensively used by individuals associated with a foreign power or foreign territory.

II. (S) POST-TARGETING ANALYSIS BY NSA

(S//SI) After a person has been targeted for acquisition by NSA, NSA will conduct post-targeting analysis. Such analysis is designed to detect those occasions when a person who when targeted was reasonably believed to be located outside the United States has since entered the United States, and will enable NSA to take steps to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States, or the intentional targeting of a person who is inside the United States. Such analysis may include:

For telephone numbers:

- Routinely comparing telephone numbers tasked pursuant to these procedures against information that has been incidentally collected from the Global System for Mobiles (GSM) Home Location Registers (HLR). These registers receive updates whenever a GSM phone moves into a new service area. Analysis of this HLR information provides a primary indicator of a foreign user of a mobile telephone entering the United States.
- NSA analysts may analyze content for indications that a foreign target has entered or intends to enter the United States. Such content analysis will be conducted according to analytic and intelligence requirements and priorities.

For electronic communications accounts/addresses/identifiers:

- Routinely checking all electronic communications accounts/addresses/identifiers tasked pursuant to these procedures against available databases that contain Internet communications data (including metadata) to determine if an electronic communications account/address/identifier was accessed from overseas. Such databases contain communications contact information and summaries of communications activity from NSA signals intelligence collection. The foreign access determination is made based on comparing the Internet Protocol address associated with the account activity to other information NSA possesses about geographical area(s) serviced by particular Internet Protocol addresses. If the IP address associated with the target activity is identified as a U.S.-based network gateway (e.g., a Hotmail server) or a private Internet Protocol address, then NSA analysts will be required to perform additional research to determine if the access was in a foreign country using additional criteria such as machine identifier or case notation (NSA circuit identifier) of a communications link known to be foreign. Such databases normally maintain information about such activity for a 12-month period. This data will be used in an attempt to rule out false positives from U.S.-based network gateways. If the account access is determined to be from a U.S.-based machine, further analytic checks will be performed using content collection to determine if the target has moved into the United States.

- Routinely comparing electronic communications accounts/addresses/identifiers tasked pursuant to these procedures against a list of electronic communications accounts/addresses/identifiers already identified by NSA as being accessed from inside the United States. This will help ensure that no target has been recognized to be located in the United States.
- NSA analysts may analyze content for indications that a target has entered or intends to enter the United States. Such content analysis will be conducted according to analytic and intelligence requirements and priorities.

(S) If NSA determines that a target has entered the United States, it will follow the procedures set forth in section IV of this document, including the termination of the acquisition from the target without delay. In cases where NSA cannot resolve an apparent conflict between information indicating that the target has entered the United States and information indicating that the target remains located outside the United States, NSA will presume that the target has entered the United States and will terminate the acquisition from that target. If at a later time NSA determines that the target is in fact located outside the United States, NSA may re-initiate the acquisition in accordance with these procedures.

(S) If NSA determines that a target who at the time of targeting was believed to be a non-United States person was in fact a United States person, it will follow the procedures set forth in section IV of this document, including the termination of the acquisition from the target without delay.

III. (U) DOCUMENTATION

(S) Analysts who request tasking will document in the tasking database a citation or citations to the information that led them to reasonably believe that a targeted person is located outside the United States. Before tasking is approved, the database entry for that tasking will be reviewed in order to verify that the database entry contains the necessary citations.

(S) A citation is a reference that identifies the source of the information, such as a report number or communications intercept identifier, which NSA will maintain. The citation will enable those responsible for conducting oversight to locate and review the information that led NSA analysts to conclude that a target is reasonably believed to be located outside the United States.

(S) Analysts also will identify the foreign power or foreign territory about which they expect to obtain foreign intelligence information pursuant to the proposed targeting.

IV. (U) OVERSIGHT AND COMPLIANCE

(S) NSA's Signals Intelligence Directorate (SID) Oversight and Compliance, with NSA's Office of General Counsel (OGC), will develop and deliver training regarding the applicable procedures to ensure intelligence personnel responsible for approving the targeting of persons under these procedures, as well as analysts with access to the acquired foreign intelligence information understand their responsibilities and the procedures that apply to this acquisition. SID Oversight and Compliance has established processes for ensuring that raw traffic is labeled and stored only in authorized repositories, and is accessible only to those who have had the proper training. SID

Oversight and Compliance will conduct ongoing oversight activities and will make any necessary reports, including those relating to incidents of noncompliance, to the NSA Inspector General and OGC, in accordance with its NSA charter. SID Oversight and Compliance will also ensure that necessary corrective actions are taken to address any identified deficiencies. To that end, SID Oversight and Compliance will conduct periodic spot checks of targeting decisions and intelligence disseminations to ensure compliance with established procedures, and conduct periodic spot checks of queries in data repositories.

(S) The Department of Justice (DOJ) and the Office of the Director of National Intelligence (ODNI) will conduct oversight of NSA's exercise of the authority under section 702 of the Act, which will include periodic reviews by DOJ and ODNI personnel to evaluate the implementation of the procedures. Such reviews will occur at least once every sixty days.

(S) NSA will report to DOJ, to the ODNI Office of General Counsel, and to the ODNI Civil Liberties Protection Officer any incidents of noncompliance with these procedures by NSA personnel that result in the intentional targeting of a person reasonably believed to be located in the United States, the intentional targeting of a United States person, or the intentional acquisition of any communication in which the sender and all intended recipients are known at the time of acquisition to be located within the United States. NSA will provide such reports within five business days of learning of the incident. Any information acquired by intentionally targeting a United States person or a person not reasonably believed to be outside the United States at the time of such targeting will be purged from NSA databases.

(S) NSA will report to DOJ through the Deputy Assistant Attorney General in the National Security Division with responsibility for intelligence operations and oversight, to the ODNI Office of General Counsel, and to the ODNI Civil Liberties Protection Officer, any incidents of noncompliance (including overcollection) by any electronic communication service provider to whom the Attorney General and Director of National Intelligence issued a directive under section 702. Such report will be made within five business days after determining that the electronic communication service provider has not complied or does not intend to comply with a directive.

(S) In the event that NSA concludes that a person is reasonably believed to be located outside the United States and after targeting this person learns that the person 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 was in fact a United States person, it will take the following steps:

- 1) Terminate the acquisition without delay and determine whether to seek a Court order under another section of the Act. If NSA inadvertently acquires a communication sent to or from the target while the target is or was located inside the United States, including any communication where the sender and all intended recipients are reasonably believed to be located inside the United States at the time of acquisition, such communication will be treated in accordance with the applicable minimization procedures.

- 2) Report the incident to DOJ through the Deputy Assistant Attorney General in the National Security Division with responsibility for intelligence operations and oversight, to the ODNI Office of General Counsel, and to the ODNI Civil Liberties Protection Officer within five business days.

V. (U) DEPARTURE FROM PROCEDURES

(S) If, in order to protect against an immediate threat to the national security, NSA determines that it must take action, on a temporary basis, in apparent departure from these procedures and that it is not feasible to obtain a timely modification of these procedures from the Attorney General and Director of National Intelligence, NSA may take such action and will report that activity promptly to DOJ through the Deputy Assistant Attorney General in the National Security Division with responsibility for intelligence operations and oversight, to the ODNI Office of General Counsel, and to the ODNI Civil Liberties Protection Officer. Under such circumstances, the Government will continue to adhere to all of the statutory limitations set forth in subsection 702(b) of the Act.

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Date

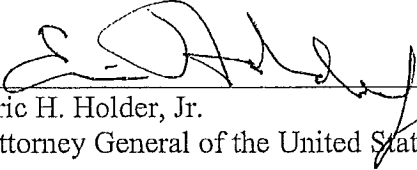

Eric H. Holder, Jr.
Attorney General of the United States

EXHIBIT B

MINIMIZATION PROCEDURES USED BY THE NATIONAL SECURITY AGENCY IN
CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE
INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE
SURVEILLANCE ACT OF 1978, AS AMENDED

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

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CLERK OF COURT

Section 1 - Applicability and Scope (U)

These National Security Agency (NSA) minimization procedures apply to the acquisition, retention, use, and dissemination of non-publicly available information concerning unconsenting United States persons that is acquired by targeting non-United States persons reasonably believed to be located outside the United States in accordance with section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"). (U)

If NSA determines that it must take action in apparent departure from these minimization procedures to protect against an immediate threat to human life (e.g., force protection or hostage situations) and that it is not feasible to obtain a timely modification of these procedures, NSA may take such action immediately. NSA will report the action taken to the Office of the Director of National Intelligence and to the National Security Division of the Department of Justice, which will promptly notify the Foreign Intelligence Surveillance Court of such activity. (U)

Section 2 - Definitions (U)

In addition to the definitions in sections 101 and 701 of the Act, the following definitions will apply to these procedures:

- (a) Acquisition means the collection by NSA or the FBI through electronic means of a non-public communication to which it is not an intended party. (U)
- (b) Communications concerning a United States person include all communications in which a United States person is discussed or mentioned, except where such communications reveal only publicly-available information about the person. (U)
- (c) Communications of a United States person include all communications to which a United States person is a party. (U)
- (d) Consent is the agreement by a person or organization to permit the NSA to take particular actions that affect the person or organization. To be effective, consent must be given by the affected person or organization with sufficient knowledge to understand the action that may be taken and the possible consequences of that action. Consent by an organization will be deemed valid if given on behalf of the organization by an official or governing body determined by the General Counsel, NSA, to have actual or apparent authority to make such an agreement. (U)

Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20320108

- (e) Foreign communication means a communication that has at least one communicant outside of the United States. All other communications, including communications in which the sender and all intended recipients are reasonably believed to be located in the United States at the time of acquisition, are domestic communications. (S//SI)
- (f) Identification of a United States person means the name, unique title, address, or other personal identifier of a United States person in the context of activities conducted by that person or activities conducted by others that are related to that person. A reference to a product by brand name, or manufacturer's name or the use of a name in a descriptive sense, e.g., "Monroe Doctrine," is not an identification of a United States person. (S//SI)
- (g) Processed or processing means any step necessary to convert a communication into an intelligible form intended for human inspection. (U)
- (h) Publicly-available information means information that a member of the public could obtain on request, by research in public sources, or by casual observation. (U)
- (i) Technical data base means information retained for cryptanalytic, traffic analytic, or signal exploitation purposes. (S//SI)
- (j) United States person means a United States person as defined in the Act. The following guidelines apply in determining whether a person whose status is unknown is a United States person: (U)
 - (1) A person known to be currently in the United States will be treated as a United States person unless positively identified as an alien who has not been admitted for permanent residence, or unless the nature or circumstances of the person's communications give rise to a reasonable belief that such person is not a United States person. (U)
 - (2) A person known to be currently outside the United States, or whose location is unknown, will not be treated as a United States person unless such person can be positively identified as such, or the nature or circumstances of the person's communications give rise to a reasonable belief that such person is a United States person. (U)
 - (3) A person known to be an alien admitted for permanent residence loses status as a United States person if the person leaves the United States and is not in compliance with 8 U.S.C. § 1203 enabling re-entry into the United States. Failure to follow the statutory procedures provides a reasonable basis to conclude that the alien has abandoned any intention of maintaining his status as a permanent resident alien. (U)
 - (4) An unincorporated association whose headquarters or primary office is located outside the United States is presumed not to be a United States person unless there is information indicating that a substantial number of its members are citizens of the United States or aliens lawfully admitted for permanent residence. (U)