UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[redacted] UNDER SEAL

MOTION FOR ORDERS EXTENDING TIME LIMITS PURSUANT TO 50 U.S.C. § 1881a(j)(2) ~~(S)~~

THE UNITED STATES OF AMERICA, through the undersigned Department of Justice attorney, respectfully moves the Court to issue orders pursuant to 50 U.S.C. § 1881a(j)(2) of the Foreign Intelligence Surveillance Act of 1978, as amended (the Act), extending to July 22, 2011, the time limits for the Court to complete its review of and issue orders concerning DNI/AG 702(g) Certifications [redacted] and the amendments to their respective predecessor certifications. As discussed below, the government respectfully submits that there is good cause for the extensions of the time limits, and that such extensions would be consistent with national security. ~~(S//OC,NF)~~

Classified by: Tashina Gauhar, Deputy Assistant Attorney General, NSD, DOJ
Reason: 1.4(c)
Declassify on: 5 May 2037

I. Procedural Background ~~(S)~~

A. The 2011 Reauthorization Certifications and Related Amendments ~~(S)~~

On April 20, 2011, the government submitted to the Court DNI/AG 702(g) [redacted] Included with DNI/AG 702(g) Certification [redacted] were the targeting and minimization procedures to be used by the National Security Agency (NSA), Federal Bureau of Investigation (FBI), and Central Intelligence Agency (CIA) under that certification. DNI/AG 702(g) Certification [redacted] reauthorizes DNI/AG 702(g) Certification [redacted] ~~(S//OC,NF)~~

DNI/AG 702(g) Certification [redacted] also included amendments to its predecessor certifications, DNI/AG 702(g) Certifications [redacted] Specifically, these amendments authorize the use of the minimization procedures attached as Exhibits B and E to DNI/AG 702(g) Certification [redacted] in connection with foreign intelligence

information acquired in accordance with DNI/AG 702(g) Certifications [redacted]

[redacted] These amendments also have an effective date of May 23, 2011. ~~(S//OC,NF)~~

[redacted]

[redacted]

B. Two Matters Recently Reported to the Court ~~(S)~~

1. Overcollection of [redacted] ~~(TS//SI//NF)~~

On April 19, 2011, the government filed with the Court pursuant to Rule 13(b) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, a preliminary notice of two compliance incidents, both of which concern NSA's collection of [redacted] that, in addition to targeted communications, contain communications that are not to, from, or about selectors tasked for acquisition in accordance with section 702 of the Act.[1] One of these incidents concerns NSA's overcollection of [redacted] because of [redacted][2] The government respectfully incorporates herein by reference this notice dated April 19, 2011. ~~(TS//SI//OC,NF)~~

2. Clarification Concerning Upstream Collection ~~(TS//SI//NF)~~

On May 2, 2011, the government filed, pursuant to Rule 13(a) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, a preliminary notice clarifying certain facts concerning NSA's upstream collection of electronic communications.[3] Specifically, this notice provided the Court with additional details

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[1] A copy of this notice is attached herewith at Tab A. ~~(S//OC,NF)~~

[2] The other incident reported in this notice concerned NSA's overcollection of [redacted] On March 15, 2011, NSA terminated collection [redacted] from which these [redacted] were being collected. ~~(TS//SI//OC,NF)~~

[3] A copy of this notice is attached herewith at Tab B. ~~(S//OC,NF)~~

concerning one specified category of Internet communications NSA acquires through its upstream collection -- "electronic communications [redacted]" As stated in the notice, NSA, NSD, and ODNI are still reviewing this matter and assessing its import, including what effect, if any, this type of Internet communications collection has on the efficacy of the means by which NSA prevents the intentional acquisition of Internet communications where the sender and all intended recipients are known at the time of acquisition to be located in the United States. The government respectfully incorporates herein by reference this notice dated May 2, 2011. ~~(TS//SI//OC,NF)~~

II. The Issuance of Orders Under 50 U.S.C. § 1881a(j)(2) is Appropriate in These Cases ~~(S)~~

Upon the government's submission of DNI/AG 702(g) Certification [redacted] on April 20, 2011, [redacted] the thirty-day time periods in which the Court is required to review the certifications began to run. See 50 U.S.C. § 1881a(i)(1)(B). The thirty-day time periods for the Court to review the amendments to the predecessor certifications also began to run on those same dates. See id. § 1881a(i)(C). Accordingly, the time limit for the Court to complete its review of DNI/AG 702(g) Certification [redacted] and the amendments to its predecessor certifications is May 20, 2011. Likewise, the time limit for the Court to complete its review of DNI/AG 702(g) Certifications [redacted] is May 22, 2011. ~~(S//OC,NF)~~

The Court may, however, "extend[] that time as necessary for good cause in a manner consistent with national security." 50 U.S.C. § 1881a(j)(2). For the following reasons, the government respectfully submits that there is good cause for extensions of the time limits, and that such extensions would be consistent with national security. ~~(S//OC,NF)~~

A. There is Good Cause for the Court to Extend the Time Limits for Its Review ~~(S)~~

The government believes that there is good cause for the Court to extend the deadlines for the Court to complete its review of DNI/AG 702(g) Certifications [redacted] and the amendments to their respective predecessor certifications. Specifically, as explained below, the government intends to supplement the record concerning the matters discussed above in a manner that will aid the Court in its review and in making the determinations necessary to issue orders under 50 U.S.C. § 1881a(i)(3). However, the government will not be in a position to supplement the record until after the statutory time limits for such review have expired. ~~(S//OC,NF)~~

First, NSA is in the process of [redacted] designed to eliminate the above-discussed overcollection of [redacted] communications [redacted] However, these measures are not expected to be fully operational until on or about June 17, 2011 -- which is after the time limits established by 50 U.S.C. § 1881a(i)(1)(B) and (C). Because the government believes that these corrective measures should be considered by the Court as part of its review of the certifications

and related amendments, the government respectfully submits that there is good cause for extending the time limits for such review. ~~(S//OC,NF)~~

Second, NSA, NSD, and ODNI are continuing to investigate and assess the manner in which NSA acquires through its upstream collection "electronic communications [redacted] including what affect, if any, this type of Internet communications collection has on the efficacy of the means by which NSA prevents the intentional acquisition of Internet communications where the sender and all intended recipients are known at the time of acquisition to be located in the United States. The government intends to provide additional information and analysis to the Court upon completion of this review and assessment. However, given the complexity of this issue, the government does not believe its review and assessment will be complete until after the above-discussed time limits established by 50 U.S.C. § 1881a(i)(1)(B) and (C). The government respectfully submits, therefore, there is good cause for extending those time limits because the government believes the additional information and analysis it intends to provide to the Court will assist the Court in making the required statutory findings concerning the certifications and related amendments. ~~(S//OC,NF)~~

B. Extending the Time Limit for the Court's Review is Consistent with National Security. ~~(S)~~

As this Court has recognized, "[t]he government's national security interest in conducting these acquisitions [under section 702] 'is of the highest order of magnitude.'"

In re DNI/AG Certification [redacted] Mem. Op. at 37 (USFISC Sept. 4, 2008) (quoting In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004, 1012 (FISA Ct. Rev. 2008)). For example, the foreign intelligence information the government acquires under DNI/AG 702(g) Certification [redacted] DNI/AG 702(g) Certification [redacted] Affidavit of Lt. General Keith B. Alexander, Director, NSA, ¶ 6. ~~(S//OC,NF)~~

Were the Court to issue orders under 50 U.S.C. § 1881a(j)(2) extending the time limits for its review of the certifications and related amendments so that the Court could consider these additional materials, the authorizations in the certifications being reauthorized, DNI/AG 702(g) Certification [redacted] would, by operation of 50 U.S.C. § 1881a(i)(5)(B), continue despite their expiration dates.[4] The government respectfully submits that this result would be consistent with national security, because it would allow the government's acquisition of vitally important foreign intelligence information under DNI/AG 702(g) Certifications [redacted]

[4] The government's filing of DNI/AG 702(g) [redacted] comported with 50 U.S.C. § 1881a(i)(5)(A), which requires that if the government seeks to reauthorize an authorization issued under 50 U.S.C. § 1881a(a), the government must, to the extent practicable, submit to the Court a new certification executed under 50 U.S.C. § 1881a(g), with supporting documents, at least thirty days before the expiration of the certification being reauthorized. If a new certification is filed in accordance with 50 U.S.C. § 1881a(i)(5)(A), 50 U.S.C. § 1881a(i)(5)(B) provides that the existing certification being reauthorized shall remain in effect, notwithstanding its expiration date, until the Court issues an order under 50 U.S.C. § 1881a(i)(3) with respect to the new certification. ~~(S)~~

[redacted] to continue pending the completion of the Court's review of the reauthorization certifications, DNI/AG 702(g) Certification [redacted] respectively. ~~(S//OC,NF)~~

The government further submits that it would be consistent with national security for the Court to extend its consideration of the above-discussed amendments, which authorize the use of the NSA and CIA minimization procedures submitted with DNI/AG 702(g) Certifications [redacted] in connection with foreign intelligence information acquired in accordance with the predecessors of those certifications. The NSA and CIA minimization procedures currently approved for use under those predecessor certifications, however, differ in some respects from the NSA and CIA minimization procedures submitted with DNI/AG 702(g) Certifications [redacted] The government believes that authorizing the NSA and CIA to use a single set of minimization procedures (i.e., each agency's respective minimization procedures submitted with DNI/AG 702(g) Certifications [redacted] for the entirety of each agency's holdings of foreign intelligence information acquired under section 702 will result in a more uniform application of minimization standards to that information. Authorizing each agency to use a single set of minimization procedures for that information also will significantly simplify oversight of each agency's adherence to those standards. ~~(S//OC,NF)~~

III. Conclusion ~~(S)~~

For the foregoing reasons, the government respectfully submits that there is good cause for the Court to issue orders under 50 U.S.C. § 1881a(j)(2) extending to July 22, 2011, the time limit for the Court to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certifications [redacted] and the amendments to their respective predecessor certifications, and that such an extension would be consistent with national security. For DNI/AG 702(g) Certification [redacted] the government also requests that the Court issue the proposed Notice of Extension, attached herewith. ~~(S//OC,NF)~~

Respectfully submitted,

[redacted]

National Security Division
United States Department of Justice

~~TOP SECRET//COMINT//ORCON,NOFORN~~

APPROVAL

I find that this motion regarding DNI/AG 702(g) Certifications [redacted] and the amendments to their respective predecessor certifications satisfies the criteria and requirements set forth in the Foreign Intelligence Surveillance Act of 1978, as amended, and hereby approve its filing with the United States Foreign Intelligence Surveillance Court. (S)

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

James M. Cole
Deputy Attorney General of the United States

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE DNI/AG 702(g) CERTIFICATION [redacted] et. al.	Docket No.

ORDER

This matter is before this Court on the motion of the United States for an order under 50 U.S.C. § 1881a(j)(2) of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"), extending to July 22, 2011, the time limits established by 50 U.S.C. § 1881a(i)(1)(B) and (C) for this Court to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certification [redacted] In entertaining the government's motion, this Court has considered the following:

1. DNI/AG 702(g) Certification [redacted] reauthorizes DNI/AG 702(g) Certification [redacted] which expires on August 19, 2011.

2. Included within DNI/AG 702(g) Certification [redacted] are amendments to DNI/AG 702(g) Certifications [redacted] These amendments authorize the use of the minimization procedures attached as Exhibits B and E to

Derived From: ~~Submission to the USFISC in Docket Number captioned above~~

DNI/AG 702(g) Certification [redacted] in connection with foreign intelligence information acquired in accordance with DNI/AG 702(g) Certifications [redacted]

3. The government submitted DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] to the Court on April 22, 2011.

4. By operation of 50 U.S.C. § 1881a(i)(1)(B) and (C), this Court is required to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] by May 22, 2011.

5. Based on the record presently before this Court concerning these matters, this Court will not be able to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] before May 22, 2011.

6. The government has asserted that it will be able to supplement the record concerning these matters in a manner that will aid the Court in reviewing DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] and in making the determinations necessary to issue orders under 50 U.S.C. § 1881a(i)(3). However, the government has represented that it will not be able to supplement the record until after May 22, 2011.

7. 50 U.S.C. § 1881a(j)(2) permits this Court, by order for reasons stated, to extend, as necessary for good cause in a manner consistent with national security, the time limit for this Court to issue orders under 50 U.S.C. § 1881a(i)(3) concerning DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted]

8. By operation of 50 U.S.C. § 1881a(i)(5)(B), the authorization in the certification to be reauthorized, DNI/AG 702(g) Certification [redacted] continues beyond its stated expiration date until this Court issues an order under 50 U.S.C. § 1881a(i)(3) concerning DNI/AG 702(g) Certification [redacted]

Having given full consideration to these matters and the representations in the government's motion, this Court finds that there is good cause to extend the time limit for its review of DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] beyond May 22, 2011, and that such extension is consistent with national security.

WHEREFORE, IT IS HEREBY ORDERED that the government's motion is GRANTED; and

IT IS FURTHER ORDERED, pursuant to 50 U.S.C. § 1881a(j)(2), that the time limit for this Court to complete its review of, and issue orders under 50 U.S.C. § 1881a(i)(3) concerning, DNI/AG 702(g) Certification [redacted] and the amendments to DNI/AG 702(g) Certifications [redacted] is EXTENDED to July 22, 2011.

Signed _____ Eastern Time
Date Time

_____

Judge, United States Foreign
Intelligence Surveillance Court

[redacted]

Derived From: ~~Submission to the USFISC in Docket Number captioned above~~

Derived From: ~~Submission to the USFISC in Docket Number captioned above~~

[redacted]

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