~~TOP SECRET//COMINT//ORCON,NOFORN//X1~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[redacted]

**MEMORANDUM OPINION**

This matter is before the Court on the "Government's Ex Parte Submission of [redacted] and Related Procedures and Request for an Order Approving [redacted] and Procedures," filed on [redacted] 2008 [redacted] Submission") pursuant to 50 U.S.C. § 1881a(i). For the reasons stated below, the government's request for approval is granted.

I. BACKGROUND

The [redacted] Submission [redacted] made by the government pursuant to Section 702 of the Foreign Intelligence Surveillance Act ("FISA"), which was enacted as part of the FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436 (Jul. 10, 2008) ("FAA"), and is now codified at 50 U.S.C. § 1881a. The first such filing was made on August 5, 2008, in Docket Number 702(i)-08-01. [redacted] include [redacted] by the Attorney General and the Director of National Intelligence ("DNI"); supporting affidavits by the Director of the National Security Agency ("NSA"), the Director of the Federal Bureau of Investigation ("FBI"), and the

~~TOP SECRET//COMINT//ORCON,NOFORN//X1~~

Director of the Central Intelligence Agency ("CIA"); two sets of targeting procedures, for use by the NSA and FBI respectively; and three sets of minimization procedures, for use by the NSA, FBI, and CIA respectively.

The certification in Docket Number 702(i)-08-01 governs the acquisition of foreign intelligence information [redacted] certifications, the authorized acquisitions are limited to "the targeting of non-United States persons reasonably believed to be located outside the United States." [redacted] see 50 U.S.C. § 1881a(b)(1), (3).

On September 4, 2008, the Court issued a Memorandum Opinion and accompanying Order approving the certification filed in Docket Number 702(i)-08-01 and the use of the targeting and minimization procedures submitted with that certification. A copy of that Memorandum Opinion ("08-01 Opinion") is attached hereto as Exhibit A and incorporated by reference herein.

On [redacted] 2008, the government submitted in the above-captioned docket the "Government's Ex Parte Statement and Notice of Corrections Concerning DNI/AG 702(g) [redacted] In that submission, the government stated that it "believes that the representations it has made to the Court concerning" [redacted]

[redacted] "are equally applicable to" [redacted] such that "it would be appropriate for the Court to rely on those representations in reviewing" [redacted] Specifically, the government submitted, for the Court's consideration in reviewing [redacted] and procedures [redacted]

[redacted]

II. REVIEW OF [redacted]

[redacted]

[1] [redacted]

Based on the Court's review of [redacted] in the above-captioned docket, the representations of the government [redacted], and the analysis set out in the 08-01 Opinion, the Court finds that:

(1) [redacted] been made under oath by the Attorney General and the DNI, as required by 50 U.S.C. § 1881a(g)(1)(A) [redacted]

(2) [redacted] each of the attestations required by 50 U.S.C. § 1881a(g)(2)(A), [redacted]

(3) as required by 50 U.S.C. § 1881a(g)(2)(B), [redacted] accompanied by the applicable targeting procedures[2] and minimization procedures;[3]

(4) [redacted] supported by the affidavits of appropriate national security officials, as described in 50 U.S.C. § 1881a(g)(2)(C);[4] and

---

[2] See Procedures Used by the NSA 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 FISA, as Amended ("NSA Targeting Procedures") (attached [redacted] as Exhibit A); Procedures Used by the FBI 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 FISA, as Amended ("FBI Targeting Procedures") (attached as Exhibit C).

[3] See Minimization Procedures Used by the NSA in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA, as Amended ("NSA Minimization Procedures") (attached as Exhibit B); Minimization Procedures Used by the FBI in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA, as Amended ("FBI Minimization Procedures") (attached as Exhibit D); Minimization Procedures Used by the CIA in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA, as Amended ("CIA Minimization Procedures") (attached as Exhibit E).

[4] See Affidavit of Lt. Gen. Keith B. Alexander, U.S. Army, Director, NSA (attached at Tab 1); Affidavit of Robert S. Mueller, III, Director, FBI (attached at Tab 2); Affidavit of Michael V. Hayden, Director, CIA (attached at Tab 3).

(5) [redacted] an effective date for the authorization in compliance with 50 U.S.C. § 1881a(g)(2)(D) [redacted] Accordingly, the Court finds [redacted] all the required elements." 50 U.S.C. § 1881a(i)(2)(A).

III. REVIEW OF THE TARGETING AND MINIMIZATION PROCEDURES

The government represents that the following sets of procedures submitted in the above-captioned docket are identical to the corresponding procedures submitted and approved in Docket Number 702(i)-08-01: the NSA Targeting Procedures, the FBI Targeting Procedures, the FBI Minimization Procedures, and the CIA Minimization Procedures. [redacted] Statement at 1-2. The Court has reviewed each of these sets of procedures and confirmed that this is the case.

The NSA Minimization Procedures submitted in the above-captioned docket are not absolutely identical to the corresponding minimization procedures submitted and approved in Docket Number 702(i)-08-01; however, the government represents that they are "in all substantive respects identical." Affidavit of Lt. Gen. Keith B. Alexander, U.S. Army, Director, NSA, at 3. The government states, see [redacted] Statement at 2 n.1, and the Court's own review confirms, that the only differences between the minimization procedures in the respective dockets are (1) references to the pertinent certifications; and (2) the inclusion of the underscored language in a provision of the NSA Minimization Procedures in the above-captioned docket:

[redacted]

[5] The statement described in 50 U.S.C. § 1881a(g)(E) is not required in this case because there has been no "exigent circumstances" determination under Section 1881a(c)(2).

[redacted]

NSA Minimization Procedures at 8 (emphasis added). In the context of acquisitions concerning [redacted] the clarification that CIA may receive communications that will further its ability to carry out [redacted] presents no new statutory or Fourth Amendment issues.

Moreover, with regard to both sets of targeting procedures and all three sets of minimization procedures, the Court has no reason to think that their application to acquisitions concerning [redacted] will be any less effective in satisfying the requirements of Section 1881a and the Fourth Amendment than the Court found them to be for acquisitions concerning [redacted]

Accordingly, based on the Court's review of the targeting and minimization procedures in the above-captioned docket, the representations of the government first made in Docket Number 702(i)-08-01 and reaffirmed in this matter, and the analysis set out in the 08-01 Opinion, the Court finds that the targeting and minimization procedures are consistent with the requirements of 50 U.S.C. § 1881a(d)-(e) and with the Fourth Amendment.

## IV. CONCLUSION

Based on the foregoing statement of reasons and the fuller statement of reasons provided in the 08-01 Opinion 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), [redacted] submitted in the above-captioned docket "in

accordance with [Section 1881a(g)] [redacted] all the required elements and that the targeting and minimization procedures adopted in accordance with [Section 1881a(d)-(e)] are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States." A separate order approving [redacted] and the use of the procedures pursuant to Section 1881a(i)(3)(A) is being entered contemporaneously herewith.

ENTERED this [redacted] 2008 [redacted]

MARY A. McLAUGHLIN
Judge, United States Foreign
Intelligence Surveillance Court

~~SECRET~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[redacted]

**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 above-captioned [redacted] submitted in accordance with [50 U.S.C. § 1881a(g)] [redacted] all the required elements and that the 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 [redacted] and the use of such procedures are approved.

ENTERED this [redacted] 2008, [redacted]

Mary A. McLaughlin

MARY A. McLAUGHLIN
Judge, United States Foreign
Intelligence Surveillance Court

exempt under b(6) Deputy Clerk
FISC, certify that this document
is a true and correct copy of
the origina exempt under b(6)

~~SECRET~~