



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2006

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

The Honorable F. James Sensenbrenner, Jr.
 Chairman
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

In accordance with Sections 1826, 1846, and 1862 of the Foreign Intelligence Surveillance Act of 1978, as amended, I am submitting herewith the semi-annual reports of the Attorney General concerning physical searches conducted under the Act and all requests for pen register and trap and trace surveillance under the Act. In addition, in accordance with Section 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, I am submitting herewith the semi-annual report of the Attorney General also concerning certain activities under and legal interpretations of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801, *et. seq.* These reports cover the period January 1, 2006, through June 30, 2006.

Sincerely,

James H. Clinger
 Acting Assistant Attorney General

Attachments

cc: The Honorable John Conyers, Jr.
 Ranking Minority Member

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December 21, 2006

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

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with Sections 1808(a), 1826, and 1862 of the Foreign Intelligence Surveillance Act of 1978, as amended, I am submitting herewith the semi-annual reports of the Attorney General concerning electronic surveillances and physical searches conducted under the Act and all requests for pen registers and trap and trace surveillance under the Act. In addition, in accordance with Section 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, I am submitting herewith the semi-annual report of the Attorney General also concerning certain activities under and legal interpretations of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801, *et. seq.* These reports cover the period January 1, 2006, through June 30, 2006.

Sincerely,

A handwritten signature in cursive script that reads "James H. Clinger".

James H. Clinger
Acting Assistant Attorney General

Attachments

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

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December 21, 2006

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

The Honorable Peter Hoekstra
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In accordance with Sections 1808(a), 1826, and 1862 of the Foreign Intelligence Surveillance Act of 1978, as amended, I am submitting herewith the semi-annual reports of the Attorney General concerning electronic surveillances and physical searches conducted under the Act and all requests for pen registers and trap and trace surveillance under the Act. In addition, in accordance with Section 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, I am submitting herewith the semi-annual report of the Attorney General also concerning certain activities under and legal interpretations of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801, *et. seq.* These reports cover the period January 1, 2006, through June 30, 2006.

Sincerely,

James H. Clinger
Acting Assistant Attorney General

Attachments

cc: The Honorable Jane Harman
Ranking Minority Member

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2006

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

The Honorable Pat Roberts
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with Sections 1808(a), 1826, and 1862 of the Foreign Intelligence Surveillance Act of 1978, as amended, I am submitting herewith the semi-annual reports of the Attorney General concerning electronic surveillances and physical searches conducted under the Act and all requests for pen registers and trap and trace surveillance under the Act. In addition, in accordance with Section 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, I am submitting herewith the semi-annual report of the Attorney General also concerning certain activities under and legal interpretations of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801, *et. seq.* These reports cover the period January 1, 2006, through June 30, 2006.

Sincerely,

A handwritten signature in cursive script that reads "James H. Clinger".

James H. Clinger
Acting Assistant Attorney General

Attachments

cc: The Honorable John D. Rockefeller IV
Vice Chairman

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THE ATTORNEY GENERAL'S SEMI-ANNUAL REPORT
UNDER THE
FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED
BY SECTION 6002 OF THE
INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004
December 2006

This report is submitted pursuant to the Foreign Intelligence Surveillance Act of 1978 ("FISA" or the "Act"), as amended, 50 U.S.C. §§ 1801 et seq., and covers the period January 1, 2006, through June 30, 2006. (U)

I. Aggregate Number of Persons Targeted for Orders Under the Act (U)

Section 601(a)(1) of FISA requires the Attorney General to report on "the aggregate number of persons targeted for orders issued under the Act" for electronic surveillance, physical search, pen registers, and access to records. FISA defines "person" as "any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power." 50 U.S.C. § 1801(m). (U)

b(1), b(7)(E)



~~(TS)~~

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~~Classified by: James A. Baker, Counsel
for Intelligence Policy, Office of
Intelligence Policy and Review
National Security Division
U.S. Department of Justice~~

~~Reason: 1.4(c)
Declassify on: X1~~

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[REDACTED]

~~(TS)~~

A. Electronic Surveillance (U)

[REDACTED]

~~(S)~~

B. Physical Searches (U)

[REDACTED]

~~(S)~~

C. Pen Registers/Trap and Trace Devices (U)

The aggregate number of persons targeted for orders for pen registers/trap and trace devices issued under section 402 of the Act, 50 U.S.C. § 1842, from January 1, 2006, through June 30, 2006, was at least 104.¹ ~~(S)~~

D. Access to Tangible Things (U)

[REDACTED]

² The business records portion of the combined applications seeks telecommunications subscriber information for telephone numbers in conjunction with the Court-authorized installation and use of pen registers/trap and trace devices. ~~(S)~~

b1-1 Per FBI
b3-1

¹ Of these, [REDACTED] in pen register/trap and trace applications, [REDACTED] in combined pen register-trap and trace/business records applications, and [REDACTED] in both pen register/trap and trace applications and combined pen register-trap and trace/business records applications. ~~(S)~~

b1-1 Per FBI
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² Of these, [REDACTED] in combined pen register-trap and trace/business records applications, [REDACTED] in business records applications, and [REDACTED] both a combined pen register-trap and trace/business records application and a business records application. ~~(S)~~

b1-1 Per FBI
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II. Number of Individuals Covered by an Order Under Section 101(b)(1)(C) (U)

[Redacted] (S)

III. Attorney General Authorizations for Use of FISA-derived Information Use in a Criminal Proceeding (U)

[Redacted] (S)

IV. Summary of Significant Legal Interpretations (U)

[Redacted] (S)

1. [Redacted] (S)

[Redacted]

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1: Introduction (U)

This report is submitted pursuant to Sections 108(a), 306, 406, and 502 of the Foreign Intelligence Surveillance Act of 1978 (FISA or the Act), as amended, 50 U.S.C. §§ 1801-1811, 1821-1829, 1841-1846, 1861-1862. It covers all electronic surveillance, physical searches, pen register/trap and trace surveillance, and requests for access to certain business records for foreign intelligence purposes conducted under the Act by the Federal Bureau of Investigation (FBI), and electronic surveillance conducted by the National Security Agency (NSA), during the period January 1, 2006, through June 30, 2006. (S)

[REDACTED]

The FISC denied no applications during this reporting period. (U)

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[REDACTED]

(S)

2. [REDACTED]

(S) (U)

3. In the last reporting period, one of the judges on the FISC requested a memorandum of law to advise the FISC regarding the government's collection of post-cut-through digits through telephone pen register surveillance under FISA. "Post-cut-through digits" is a term of art that refers to digits dialed from a targeted telephone number after the initial call set-up is completed or "cut-through." Some post-cut-through digits are simply telephone numbers that constitute call processing information, such as when a party dials a toll-free number to connect to a service provider (e.g., 1-800-CALL-ATT), then, after the initial call is connected to the service provider, enters an account number and another phone number in order to be connected to a party. Other post-cut-through digits may not include call processing information but instead may constitute exclusively call content, such as when a caller phones and is connected to an automated system, such as a pharmacy, and enters information like a prescription number, or selects options from a menu using the telephone dial pad. (S) (U)

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In the memorandum of law, filed in May 2006, the government provided the factual and legal bases for its authority to collect and use call processing-type post-cut-through digits under FISA. The government also advised the FISC that in future telephone pen register applications, the government may, in some cases, specifically seek authority for secondary orders requiring a service provider to provide all dialing, routing, addressing or signaling information transmitted by a target telephone, which, in light of technological constraints, may include content and non-content digits alike. ~~In addition, the United States advised that future~~ requests for pen register authority will include the restriction that the government will make no affirmative investigative use of any captured post-cut-through digits that constitute the contents of a communication, except in a rare case in order to prevent an immediate danger of death, serious physical injury, or harm to the national security. ~~(S)~~ (U)

Since the filing of the May 2006 memorandum, the FISC has continued to approve pen register applications specifically authorizing the government to record or decode all post-cut-through digits. However, the FISC has made modifications to the government's proposed pen register orders. Although the FISC has authorized the government to record and decode all post-cut-through digits dialed by the targeted telephone, it has struck the language specifically authorizing the government to make affirmative investigative use of possible content post-cut-through digits in cases in order to prevent immediate danger of death, serious physical injury or harm to the national security, and substituted language prohibiting any investigative use of such digits absent further leave of the FISC. The government believes the proposed exception is reasonable under the Fourth Amendment and such emergency exceptions for the Fourth Amendment's warrant requirement have long been recognized as a matter of statutory and common law. The government has made this argument to the FISC as part of a separate legal memorandum, discussed below, pertaining to collection of post-cut-through digit information under FISA. ~~(S)~~ (U)

4. In July 2006, a magistrate judge in the Southern District of Texas denied a government application to acquire post-cut-through digits in a criminal investigation, expressly rejecting the government's argument that 18 U.S.C. § 3121(c) implicitly authorizes the acquisition of content using a pen register/trap and trace device, given the current state of filtering technology. In July 2006, the Chief Judge of the FISC, Judge Colleen Kollar-Kotelly, issued an order requesting that the government submit a written brief to the FISC discussing how, if at all, the magistrate's opinion affected

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the government's analysis as set forth in its May 2006 memorandum on post-cut-through digits. ~~(S)~~ (U)

On September 25, 2006, the Department filed a memorandum of law in response to the Court's July 2006 order regarding the recording and decoding of post-cut-through digits under FISA. The memorandum noted that the magistrate's decision was not binding on the FISC, and that because the magistrate misconstrued the plain meaning and legislative history of the criminal pen register statute and ~~misapplied certain canons of statutory construction, the FISC should~~ decline to follow the opinion. In addition, the government noted that the revised USA PATRIOT Act provided additional authority that was not present in the Texas case, under which the government may obtain "non-content" post-cut-through digits dialed for call processing. The Court has not yet issued an opinion or order with respect to this memorandum. ~~(S)~~ (U)

V. Copies of Decisions or Opinions (U)

Other than those opinions which were previously provided, there were no new decisions or opinions of the Court or the Court of Review that included significant construction or interpretation of the provisions of the Act issued during the period from January 1, 2006, through June 30, 2006. Copies of those previously reported opinions were provided with the last report. Accordingly, there are no copies of opinions attached to this report. ~~(S)~~

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[REDACTED]

[REDACTED]

2. *Descriptions* (U)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰ Some of the individuals listed below, however, may be current targets of Court-authorized pen register/trap and trace surveillance. (U)

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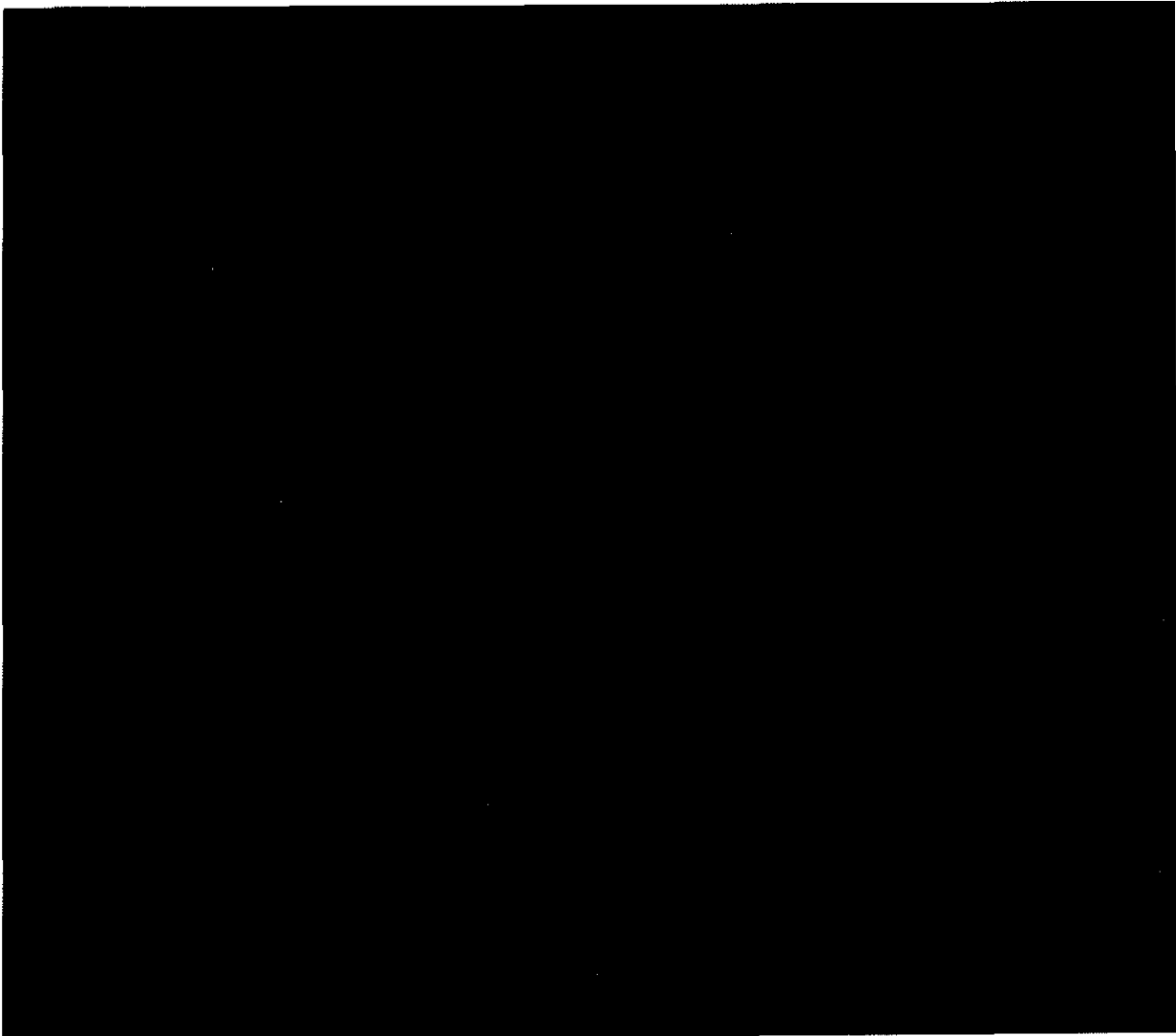
Emergency Surveillance or Physical Search (U)

During this reporting period, the Attorney General (or Deputy Attorney General or Acting Attorney General) authorized emergency electronic surveillance and/or physical search pursuant to 50 U.S.C. §§ 1805(f), 1824(e), or 1843(a)-(b) [REDACTED]

[REDACTED] These emergency authorizations resulted in [REDACTED] (E)

[REDACTED] and zero applications for pen register/trap and trace surveillance.¹¹

~~Applications or other appropriate pleadings were filed with the FISC within 72 hours of each emergency authorization (for electronic surveillance and/or physical search applications), or within 48 hours (for pen register/trap and trace applications). The FISC approved all of the applications and/or accepted the other pleadings. (S)~~



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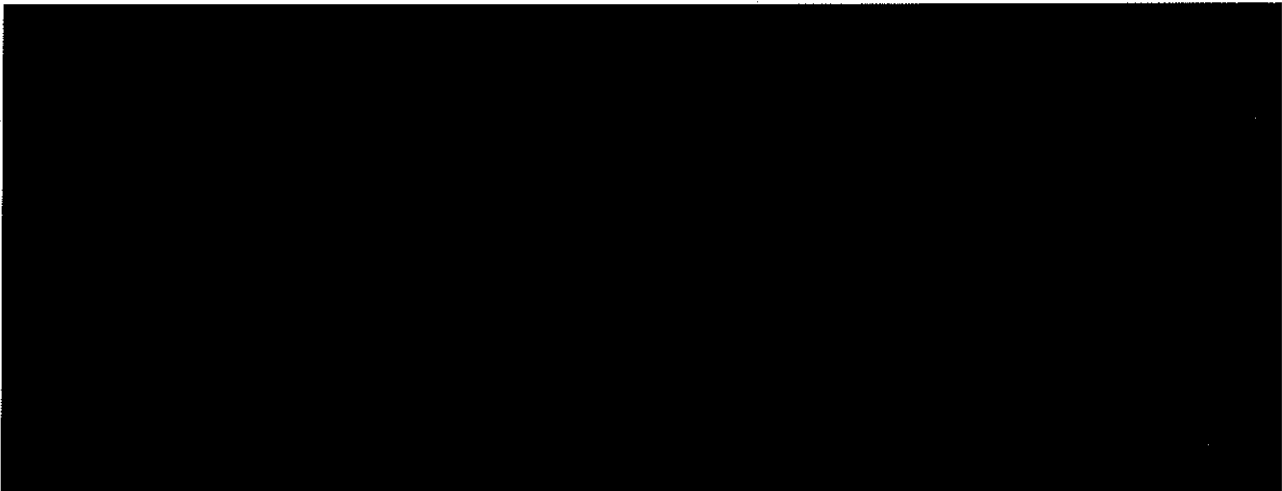
G. Pen Register/Trap and Trace Surveillance. (U)

During this reporting period, the United States filed 120 applications with the FISC seeking authorization for the FBI and/or the NSA to conduct pen register/trap and trace surveillance pursuant to 50 U.S.C. §§ 1841-1846, as amended. In these 120 applications, at least 49 United States persons were the targets of pen register/trap and trace surveillance.¹³



b1-1 Per FBI
b3-1
b7E-6

The FISC denied no applications, as they were originally presented, during this reporting period. Five orders authorizing pen register/trap and trace surveillance were modified by the FISC. ~~(S)~~



¹³ As has been the practice in the past several reports, this report does not include thumbnail descriptions of U.S. person targets of pen register/trap and trace surveillance. The Department notes, however, that all applications for pen register/trap and trace surveillance concerning U.S. persons contain a statement describing the factual circumstances demonstrating to the FISC why the related foreign counterintelligence investigation is not based solely on activities protected by the First Amendment to the Constitution, in accordance with FISA. ~~(S)~~

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[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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b7E-2, 5, 6

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[REDACTED]
[REDACTED] ~~(S)~~

As was discussed in previous semi-annual reports, many of these requests for the production of tangible things pursuant to 50 U.S.C. § 1861 were presented to the FISC in a combined format with pen register/trap and trace applications. Because of that combination, the number of requests for the production of tangible things increased in past semi-annual reports because ~~the practice of filing combined business record and pen register/trap and trace applications continued.~~ ~~(S)~~

As noted above, however, on March 9, 2006, 50 U.S.C. §§ 1861 and 1842 were amended. See USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177 (March 9, 2006). As part of the revisions, 50 U.S.C. § 1842 (the FISA Pen Register provision) was amended to include telephone subscriber data as part of the information that must be disclosed by the wire or electronic communication service upon request of the Department through a pen register or trap and trace device. Because of this amendment to the statute, the Department anticipated in the last Semi-Annual Report that the number of requests for production of tangible things pursuant to Section 215 would decrease in future reporting periods. In the last reporting period, there were 78 requests for the production of tangible things pursuant to 50 U.S.C. § 1861, compared to 38 requests during this reporting period. The Department anticipates that the number of requests for production of tangible things pursuant to Section 215 will continue to decline in future reporting periods. ~~(S)~~

E. Scope of FISC's Jurisdiction (U)

In connection with combined applications for authority to install and use pen registers and trap and trace devices and obtain business records under FISA, OIPR has sought, and the FISC has granted, a [REDACTED]

[REDACTED]

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[REDACTED]

~~(S)~~

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F. Post-Cut-Through Digits (S)

In May 2006, at the request of one of the judges on the FISC, the government filed a memorandum of law to advise the FISC regarding the government's collection of post-cut-through digits through telephone pen register surveillance under FISA. "Post-cut-through digits" is a term of art that refers to digits dialed from a targeted telephone number after the initial call set-up is completed or "cut-through." Some post-cut-through digits are simply telephone numbers that constitute call processing information, such as when a party dials a toll-free number to connect to a service provider (e.g., 1-800-CALL-ATT), then, after the initial call is connected to the service provider, enters an account number and another phone number in order to be connected to a party. Other post-cut-through digits may not include call processing information but instead may constitute exclusively call content, such as when a caller phones and is connected to an automated system, such as a pharmacy, and enters information like a prescription number. (S) (U)

In the May 2006 memorandum of law, the government provided the factual and legal bases for its authority to collect and use call processing-type post-cut-through digits under FISA. The government also advised the FISC that future telephone pen register applications would specifically seek authority for secondary orders requiring a service provider to provide all dialing, routing, addressing or signaling information transmitted by a target telephone, which, in light of technological constraints, may include content and non-content digits alike. In addition, the United States advised that future requests for pen register authority would include the restriction that the government would make no affirmative investigative use of any captured post-cut-through digits that constitute the contents of a communication, except in a rare case in order to prevent an immediate danger of death, serious physical injury, or harm to the national security. Since the filing of the May 2006 memorandum, the FISC has approved pen register applications specifically authorizing the government to record or decode all post-cut-through digits. (S) (U)

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In July 2006, a magistrate judge in the Southern District of Texas denied a government application to acquire post-cut-through digits under criminal pen register authority in Title 18, expressly rejecting the government's argument that 18 U.S.C. § 3121(c) implicitly authorizes the acquisition of content using a pen register/trap and trace device given the current state of filtering technology. In July 2006, the FISC issued an order requesting that the government submit a written brief to the FISC discussing how, if at all, the magistrate's opinion affected the government's analysis as set forth in its May 2006 memorandum on acquisition of post-cut-through digits under FISA. ~~(S)~~ (U)

On September 25, 2006, the Department filed a memorandum of law in response to the FISC's July 2006 order regarding the recording and decoding of post-cut-through digits under FISA. The memorandum noted that the magistrate's decision was not binding on the FISC, and asserted that because the magistrate misconstrued the plain meaning and legislative history of the criminal pen register statute and misapplied certain canons of statutory construction, the FISC should decline to follow the opinion. In addition, the government noted that the revised USA PATRIOT Act provided additional authority in the FISA pen register provision, which was not relevant in the magistrate judge's decision under Title 18, pursuant to which the government may obtain "non-content" post-cut-through digits dialed for call processing. ~~(S)~~ (U)

Although the FISC has not yet issued a written opinion or order with respect to this memorandum, since its filing the FISC has continued to approve pen register applications specifically authorizing the government to record or decode all post-cut-through digits. After the filing of the September 25, 2006, memorandum, however, the FISC has made modifications to the government's proposed pen register orders. Although the FISC has authorized the government to record and decode all post-cut-through digits dialed by the targeted telephone, it has struck the language specifically authorizing the government to make affirmative investigative use of possible content post-cut-through digits in cases in order to prevent immediate danger of death, serious physical injury or harm to the national security, and substituted language prohibiting any investigative use of such digits absent further leave of the FISC. The government believes the proposed exception is reasonable under the Fourth Amendment and such emergency exceptions for the Fourth Amendment's warrant requirement have long been recognized as a matter of statutory and common law. The government made this argument to the FISC in the September 25, 2006, memorandum of law. ~~(S)~~ (U)

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On August 7, 2006, the FISC issued a supplemental order regarding the maintenance and use in FBI databases of post-cut-through digits that have been collected pursuant to FISA. Specifically, the FISC ordered the government to submit a report that: (1) explained how the government is implementing its obligation to make no affirmative use of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information except in emergency situations; and (2) explained the procedures in place to ensure that the FISC is notified whenever the government decides to make affirmative ~~investigative use of such digits that do not constitute call dialing, routing, addressing or signaling information.~~ On November 1, 2006, the government submitted the report describing the FBI systems that contain the post-cut-through digits, the processes through which the pen register information enters FBI databases, the FBI's handling of dialed-number information acquired pursuant to pen register orders, and the proposed procedures to better ensure that no affirmative investigative use is made of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information. The report also addresses the current procedures in place to ensure that the FISC is notified in the event that the government makes affirmative investigative use of post-cut-through digits that do not constitute call dialing, routing, addressing, or signaling information in order to prevent immediate danger of death, serious injury, or harm to the national security. ~~(S//NF)~~ (U)

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G. [REDACTED] (S)

[REDACTED]

[REDACTED]

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