

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

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

[REDACTED] :  
[REDACTED] :  
Docket No.: [REDACTED]

B1  
B3

SUPPLEMENTAL OPINION

This case involves what the government terms a [REDACTED] pen register/trap and trace device. In brief, the government proposes to [REDACTED]. When a [REDACTED] NSA reviews this information [REDACTED] and, if appropriate, [REDACTED] however, the [REDACTED] is beyond the scope of what the government seeks to have authorized pursuant to its pen register/trap and trace application.

B1  
B3  
B7E

The Foreign Intelligence Surveillance Court (FISC) has granted a number of applications for authority to install and use similar pen register/trap and trace devices under the pen register/trap and trace device provisions of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA), which are codified at 50 U.S.C. § 1842. See, e. g., Docket No. [REDACTED]

B1  
B3  
B7E

[REDACTED] This supplemental opinion summarizes the reasons for the Court's conclusion that, under the circumstances of this case, the authorities sought herein may be granted.

[REDACTED] Memorandum of Law submitted by the government in Docket No. [REDACTED], page 10. It includes, for example, [REDACTED] Id. at 10-11.

B1  
B3  
B7E

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

Page 1

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

First, the [REDACTED] at issue falls within the applicable statutory definitions of "pen register" and "trap and trace device."<sup>2</sup> With regard to communications from a [REDACTED], it constitutes "a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted," within the definition of "pen register" at 18 U.S.C. § 3127(3). [REDACTED]

B1  
B3  
B7E

[REDACTED] Consistent with these definitions, the information obtained by the [REDACTED] does not "include the contents of any communication." *Id.* § 3127(3)-(4).<sup>3</sup>

Upon application of the government pursuant to 50 U.S.C. § 1842,<sup>4</sup> the FISC may enter an order "approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements" of that section. 50 U.S.C. § 1842(d)(1) (emphasis added). The fair import of section 1842(d)(1) is that, upon making the required finding, the FISC may issue an order authorizing the government to [REDACTED]

[REDACTED] The pen register/trap and trace process in this case requires that the [REDACTED] and the government has represented that [REDACTED]

B1  
B3  
B7E

[REDACTED] Memorandum of Law submitted in this docket at pages 5-6.

<sup>2</sup> For purposes of 50 U.S.C. § 1842, "pen register" and "trap and trace device" have the meanings given such terms in 18 U.S.C. § 3127. *See* 50 U.S.C. § 1841(2).

<sup>3</sup> For purposes of these definitions, "contents" "includes any information concerning the substance, purport, or meaning" of a communication. 18 U.S.C. § 2510(8).

<sup>4</sup> Section 1842 applies by its terms, "[n]otwithstanding any other provision of law," 50 U.S.C. § 1842(a)(1), and "in addition to the authority" under 50 U.S.C. §§ 1801-1811 to conduct electronic surveillance. 50 U.S.C. § 1842(a)(1).

<sup>5</sup> [REDACTED]

B1  
B3

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

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

Under these circumstances, [REDACTED]

[REDACTED] may be – and in this case is – authorized by the FISC under § 1842(d)(1).<sup>6</sup>

B1  
B3  
B7E

B1  
B3  
B7E

(continued...)

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

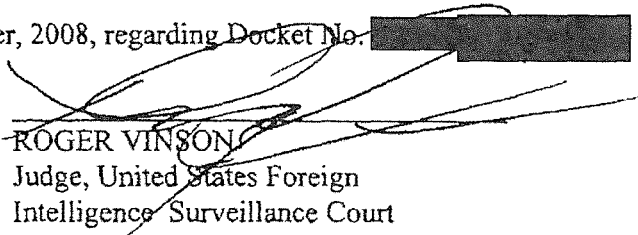
Page 3



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

B1  
B3  
B7E

ENTERED this <sup>ph</sup>18 day of December, 2008, regarding Docket No. [REDACTED]

  
ROGER VINSON  
Judge, United States Foreign  
Intelligence Surveillance Court

B1  
B3  
B7E

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

Page 4

August 20, 2018, P [REDACTED]

EFF V. DOJ 16-CV-02041 Document 1, 4 of 11

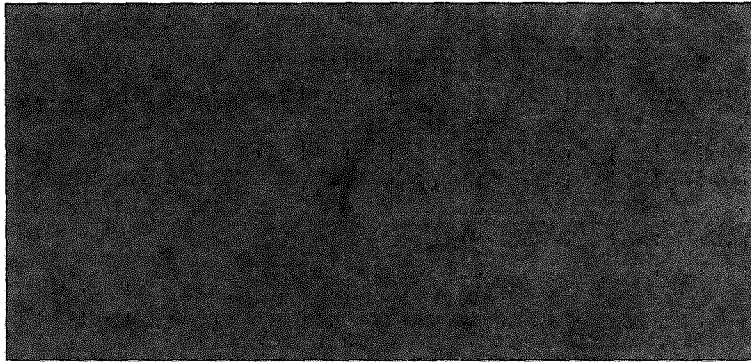
B6  
B7C

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

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT


WASHINGTON, D. C.



Docket Number: 

B1  
B3


PRIMARY ORDER

A verified application having been made, pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (the Act), Title 50, United States Code (U.S.C.), §§ 1801-1811, 1841-1846, for an order authorizing the installation and use of pen register and trap and trace devices regarding  non-U.S. persons, and full consideration having been given to the matters set forth therein, the Court finds that the application of the United States satisfies the requirements of the Act, in that:

B1  
B3

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

Derived from: Application to the USFISC  
in Docket Number Captioned Above

Declassify on: 

B1  
B3

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

(1) the application has been made by an attorney assigned to the National Security Division, U.S. Department of Justice, designated to make applications under the Act and the applicant has certified that the information likely to be obtained from the requested pen register and trap and trace devices is foreign intelligence information not concerning a U.S. person;

(2) the Attorney General has approved the application;

(3) the federal officer seeking to use the pen register and trap and trace devices

covered by this application is [REDACTED] an Acting Supervisory

B6  
B7C

Special Agent (Acting SSA) temporarily assigned to the Electronic Surveillance Operations and Sharing Unit (EOPS) of the Communications Exploitation Section in the Federal Bureau of Investigation's (FBI) Counterterrorism Division at FBI Headquarters, Washington, D.C.; and therefore

IT IS HEREBY ORDERED, pursuant to the authority conferred on this Court by the Act, that the application is GRANTED, and it is

FURTHER ORDERED, as follows

Installation and use of pen register and trap and trace devices are authorized

regarding [REDACTED]  
[REDACTED]

B1  
B3

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

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

1) The pen register and trap and trace device(s) shall be attached or applied, with no geographic limits or restrictions within the United States, to the following account, [REDACTED]

[REDACTED]

B1  
B3  
B7E

(a) [REDACTED]

[REDACTED]

2) Installation and use of one or more pen registers and trap and trace devices to collect all dialing, routing, addressing and signaling information reasonably likely to identify the sources of electronic communications directed to, and the destination of electronic communications originating from, the facilities specified in paragraph 1, above, including [REDACTED]

B1  
B3  
B7E

[REDACTED] but not the contents of such communications as defined by 18 U.S.C. § 2510(8), are authorized as follows:

3) In connection with this pen register and trap and trace surveillance, [REDACTED]

[REDACTED]

B1  
B3  
B7E

[REDACTED] the FBI [REDACTED]

[REDACTED]

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

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

[REDACTED]

[REDACTED] as described in the

B1  
B3  
B7E

Memoranda of Law submitted by the Government in Docket No. [REDACTED] and in this

docket. The FBI, [REDACTED]

[REDACTED]

[REDACTED] provided, however, [REDACTED]

[REDACTED]

(a) are authorized only to the extent necessary to accomplish [REDACTED]

[REDACTED]

B1  
B3  
B7E

(b) shall not result in the [REDACTED]

and

(c) may only be conducted when [REDACTED]

[REDACTED]

[REDACTED]

Subject to the above-stated

B1  
B3  
B7E

requirements, the Government is authorized to acquire the pen register and trap and

trace information [REDACTED]

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



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

B1  
B3  
B7E

[REDACTED] pursuant to the pen register and trap and trace authority granted herein.

4) This order is entered with the understanding that, as described in the Memorandum of Law submitted by the Government in this docket, [REDACTED]

B1  
B3  
B7E

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

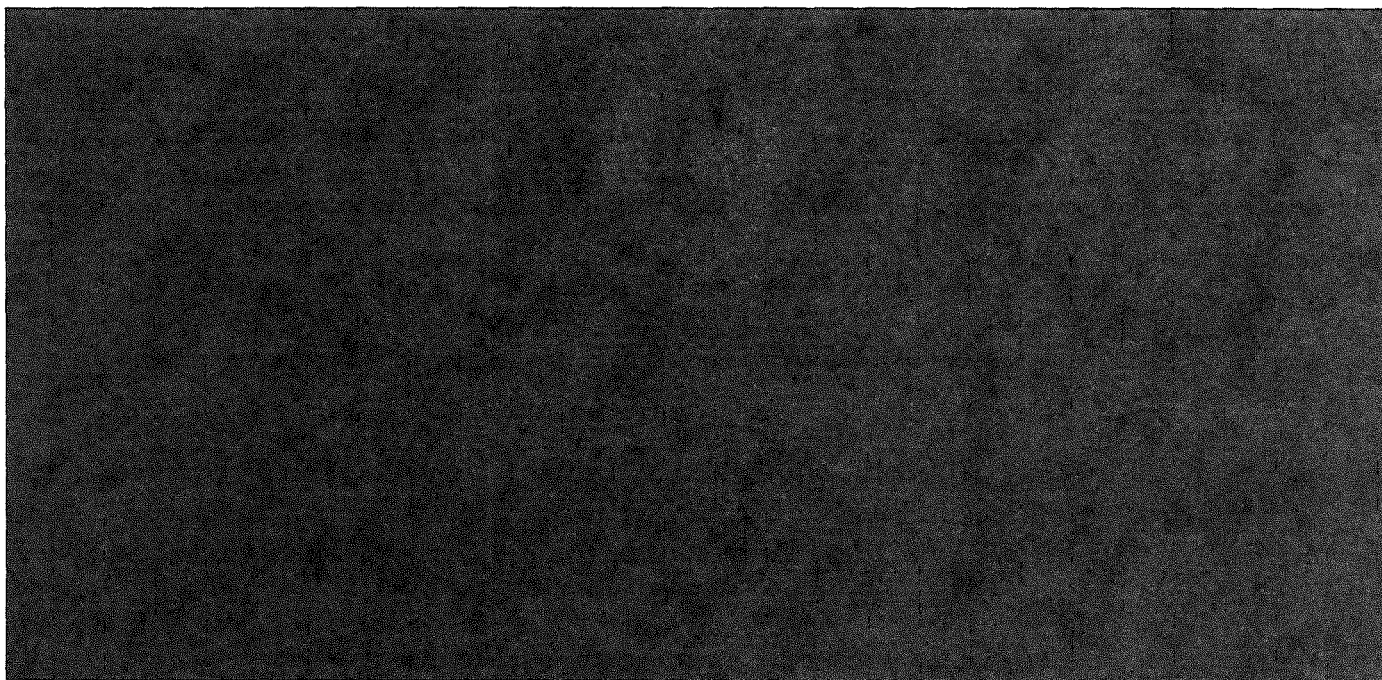
[REDACTED]

B1  
B3  
B7E

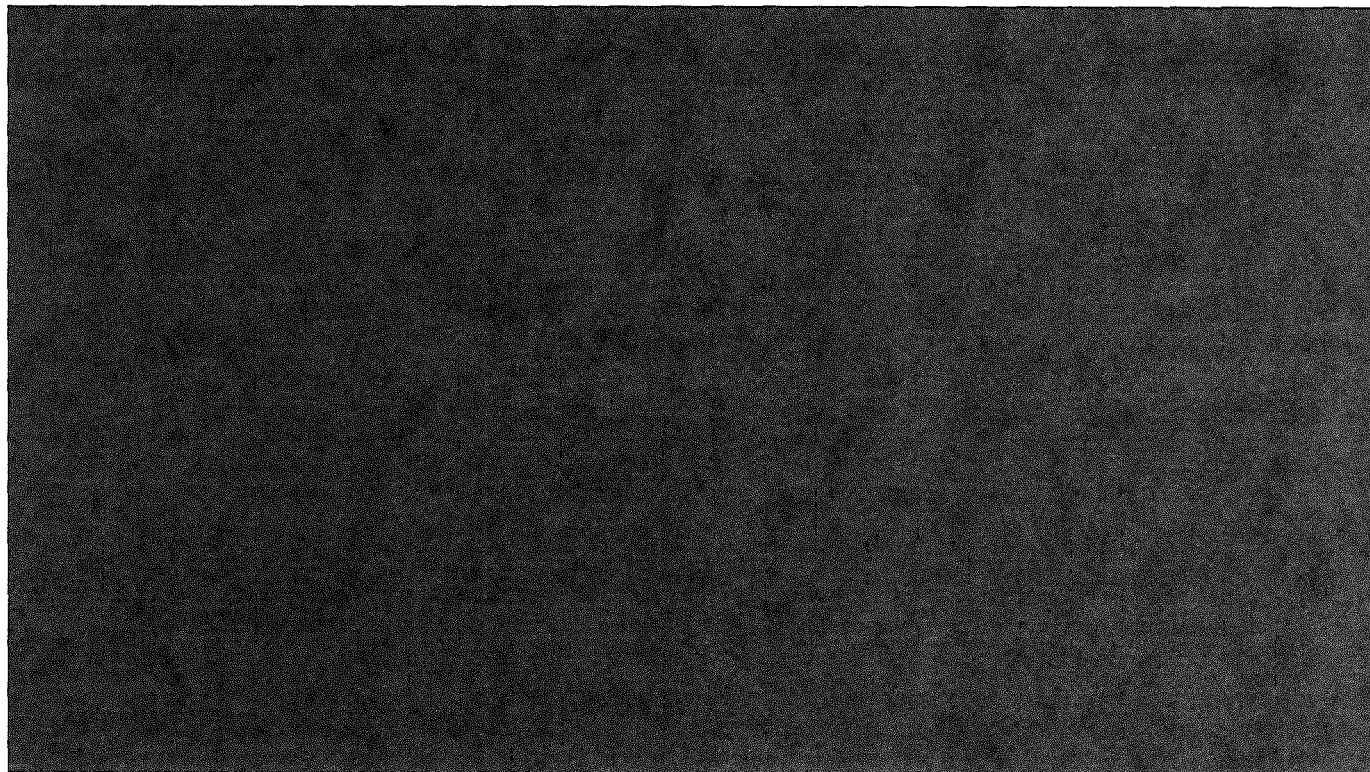
[REDACTED]

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

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



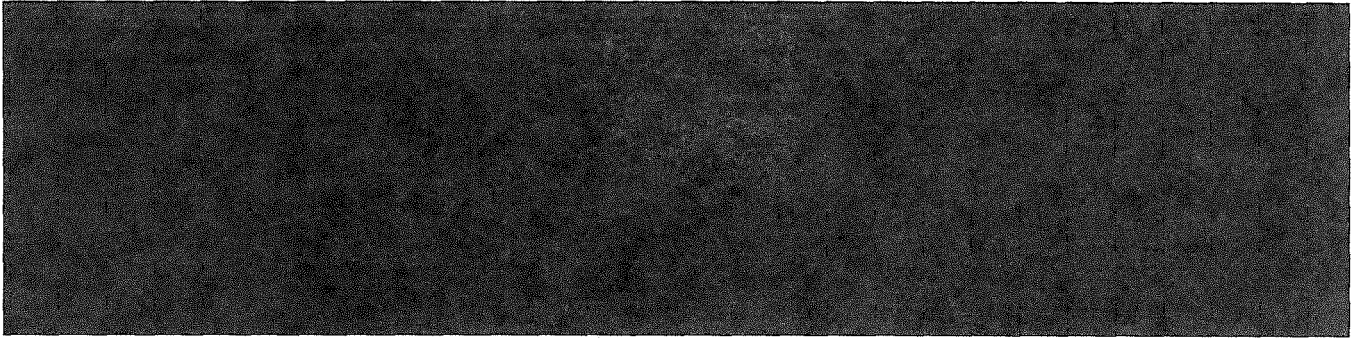
B1  
B3  
B7]



B1  
B3  
B7]

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

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



Signed \_\_\_\_\_ Eastern Time  
Date Time

B1  
B3  
B7E

This authorization regarding \_\_\_\_\_ expires on  
\_\_\_\_\_ Eastern Time.

ROGER VINSON  
Judge, United States Foreign  
• Intelligence Surveillance Court

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

\_\_\_\_\_, Deputy Clerk  
FISC, certify that this document  
is a true and correct copy of  
the original: \_\_\_\_\_

August 20, 2018, Pu \_\_\_\_\_