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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[REDACTED] (S)

[REDACTED] (S)

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OPINION AND ORDER

This matter comes before the Court on the government's Motion for Authority to Retain the Results of Court-Authorized Pen Register and/or Trap and Trace Surveillance, filed on

(S) [REDACTED] The motion is GRANTED for the reasons stated herein. (S)

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By order in this docket date [REDACTED] the undersigned judge authorized pen register/trap and trace surveillance of, among other facilities [REDACTED]

[REDACTED] Pen register/trap and trace surveillance of those (S)

(S) [REDACTED] commenced. However, on [REDACTED] the government ascertained that (S)

(S) these [REDACTED] were no longer used at the [REDACTED] specified in the order, but (S)

(S) rather a [REDACTED] Upon further inquiry, it was determined (S)

(S) that the intended target of this pen register/trap and trace surveillance [REDACTED] had (S)

[REDACTED]

(S) [REDACTED] However, a communications [REDACTED] had (S)

provided outdated information, identifying the [REDACTED] in (S)

response to a National Security Letter in [REDACTED] resulting in the mis-identified [REDACTED] (S)

(S) [REDACTED] in the application and order. (S)

The government is required to report to the Court on how it "proposes to dispose of or treat any information obtained as a result" of surveillance conducted in a manner that did not comply with the pertinent Court order. See FISC Rule 10(c)(iv). Usually, such information is destroyed or sequestered with the Court. See FISC Rule 17. Here, however, the government moves for authority to retain and, implicitly, use such information. In the particular circumstances of this case, the Court finds this proposal reasonable.

A pen register/trap and trace order "shall specify [among other things] the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied." 50 U.S.C. § 1842(d)(2)(A)(iii) (emphasis added). It is

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(S) [redacted] evident that the surveillance in this case was accomplished by using the [redacted] (S)  
(S) [redacted] as the means of identifying "the communications to which the order applies." On these facts, the Court finds that the good-faith implementation of this pen register/trap and trace surveillance on the correctly-specified [redacted] used by (S)  
(S) [redacted] specified in the order, [redacted] other than the one identified in the order, constitutes a technical, non-material deviation from the terms of the order. Such deviations, (S) while triggering the reporting obligations of FISC Rule 10(c), do not necessarily require sequestration or destruction. Retention and (otherwise lawful) use of the results of the pen register/trap and trace surveillance are reasonable in this case. The Court expresses no opinion whether, in other circumstances, retention and use of information obtained from pen register/trap and trace surveillance conducted in a manner at variance with the order would be foreclosed by 50 U.S.C. § 1809(a)(2) or otherwise.

SO ORDERED this [redacted]

(S) in Docket No [redacted] (S)

*Nathaniel M. Gorton*  
NATHANIEL M. GORTON  
Judge, United States Foreign  
Intelligence Surveillance Court

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