

FEDERAL BUREAU OF INVESTIGATION
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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT


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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE
WASHINGTON, D.C.



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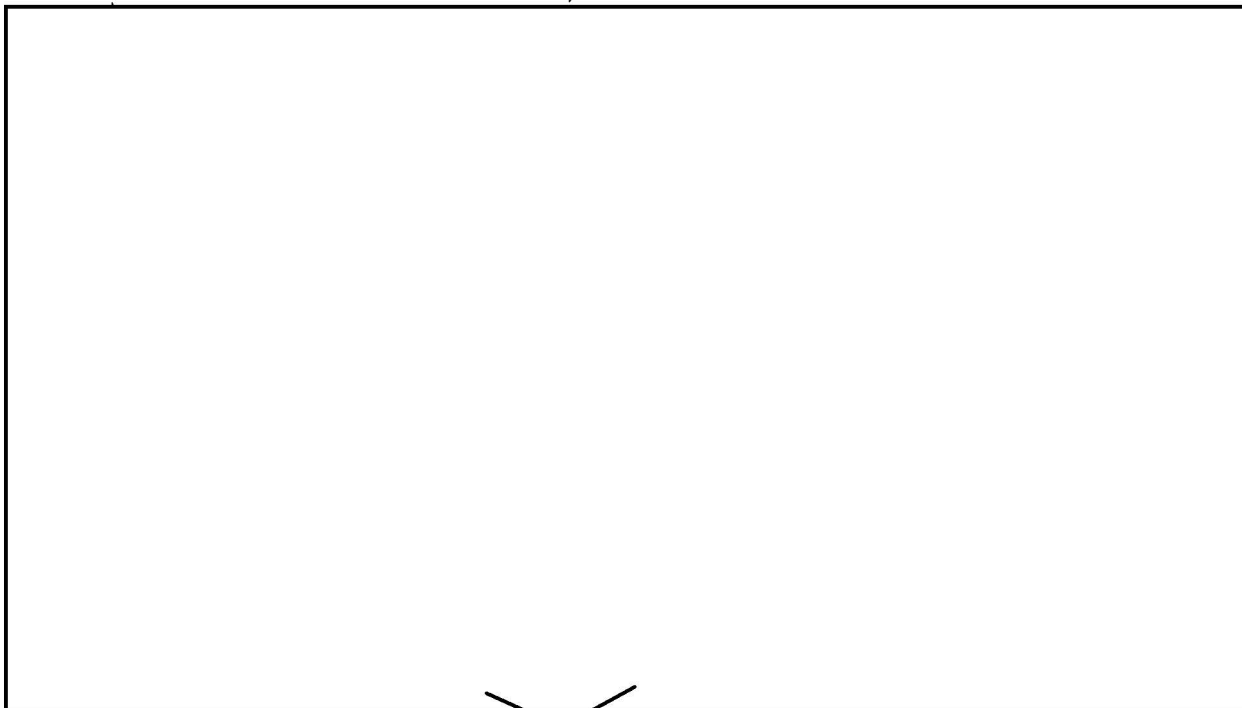
IN RE  :
A UNITED STATES PERSON. ~~(S)~~ (U)

Docket Number: 

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REPORT REGARDING THE MAINTENANCE AND USE
 IN FBI DATABASES

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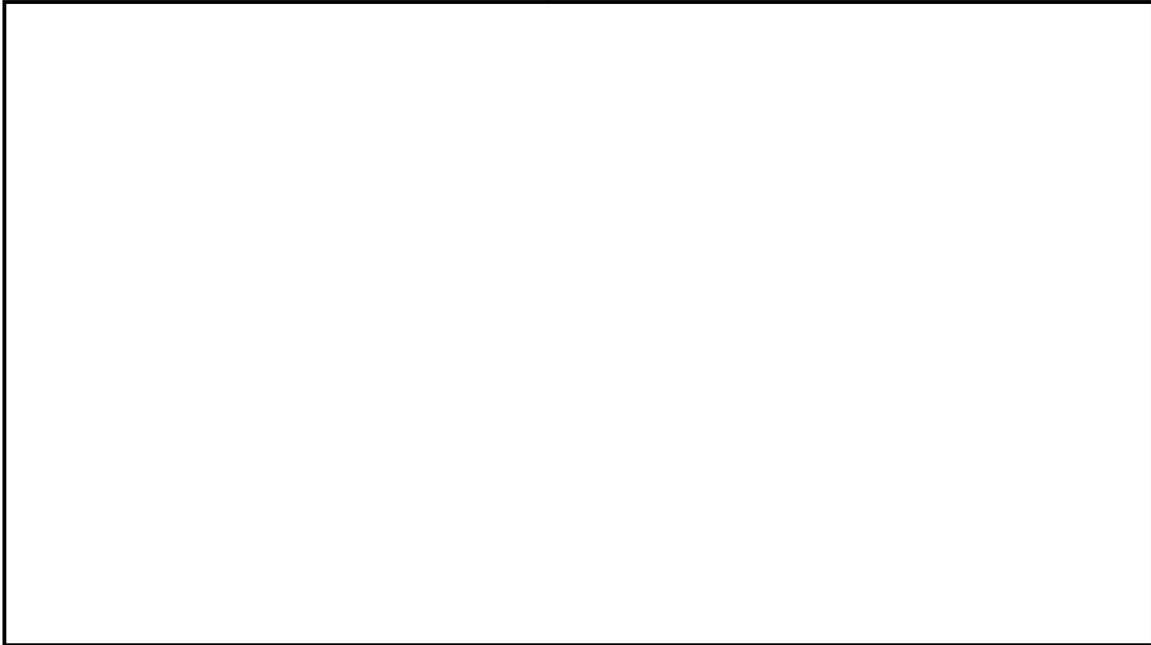
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Classified by: James A. Baker, Counsel for
Intelligence Policy, OIPR, DOJ
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Declassify on: X1

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I. General Background (U)

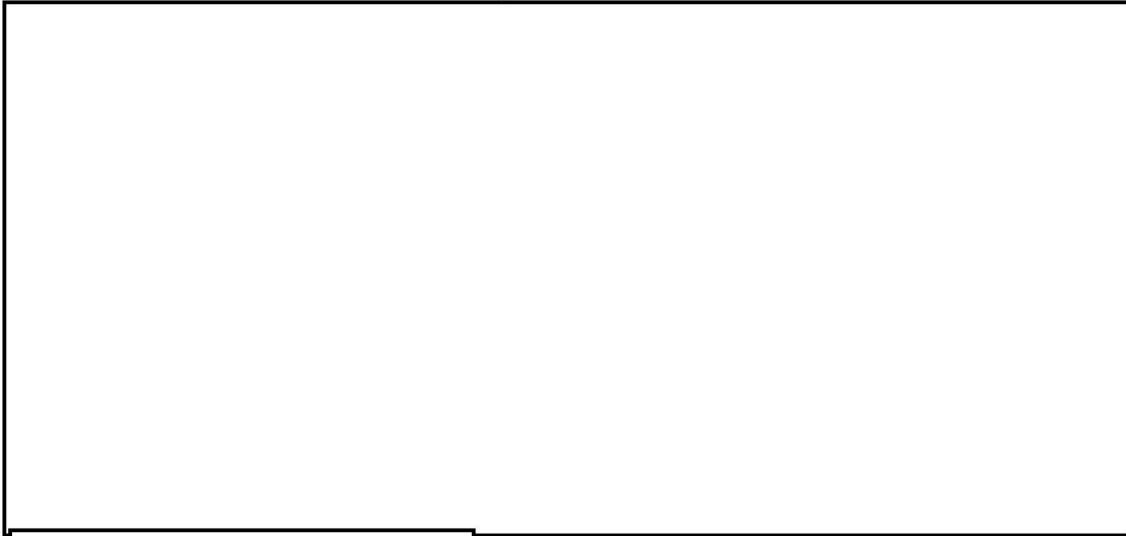


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A pen register is defined, in pertinent part, as "a device or process which records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication." 18 U.S.C. § 3127(c). This definition of pen register is incorporated by reference into FISA. 50 U.S.C. § 1841(2). Content, for the purposes of a pen register, is defined as information concerning the "substance, purport or meaning of that communication." 18 U.S.C. § 2150(8).
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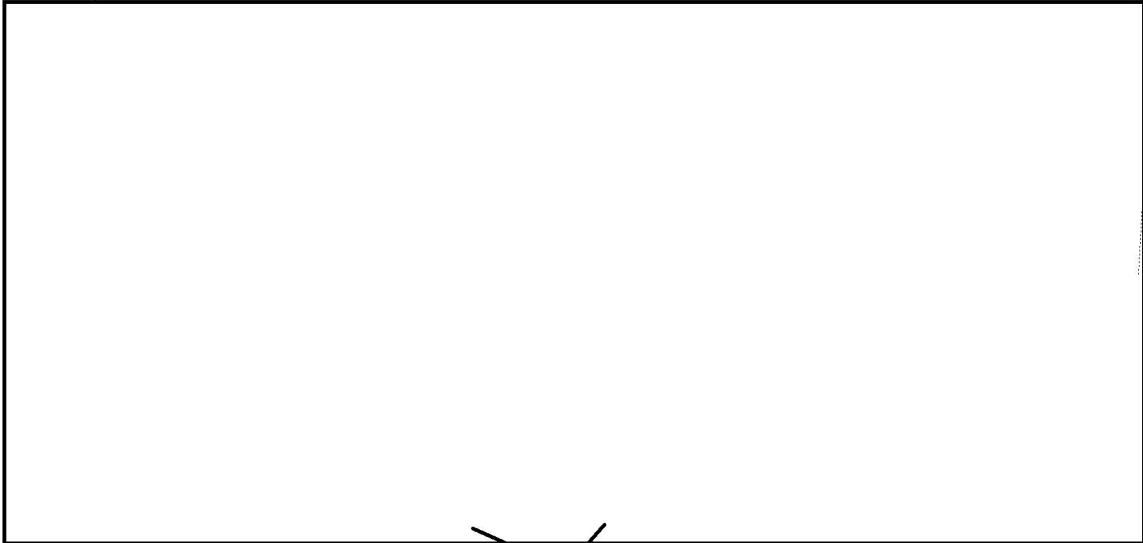
The FBI uses



to receive



² Communications Assistance for Law Enforcement Act of 1994, P.L. 103-414, 108 Stat. 4279 (1004) (hereinafter CALEA).
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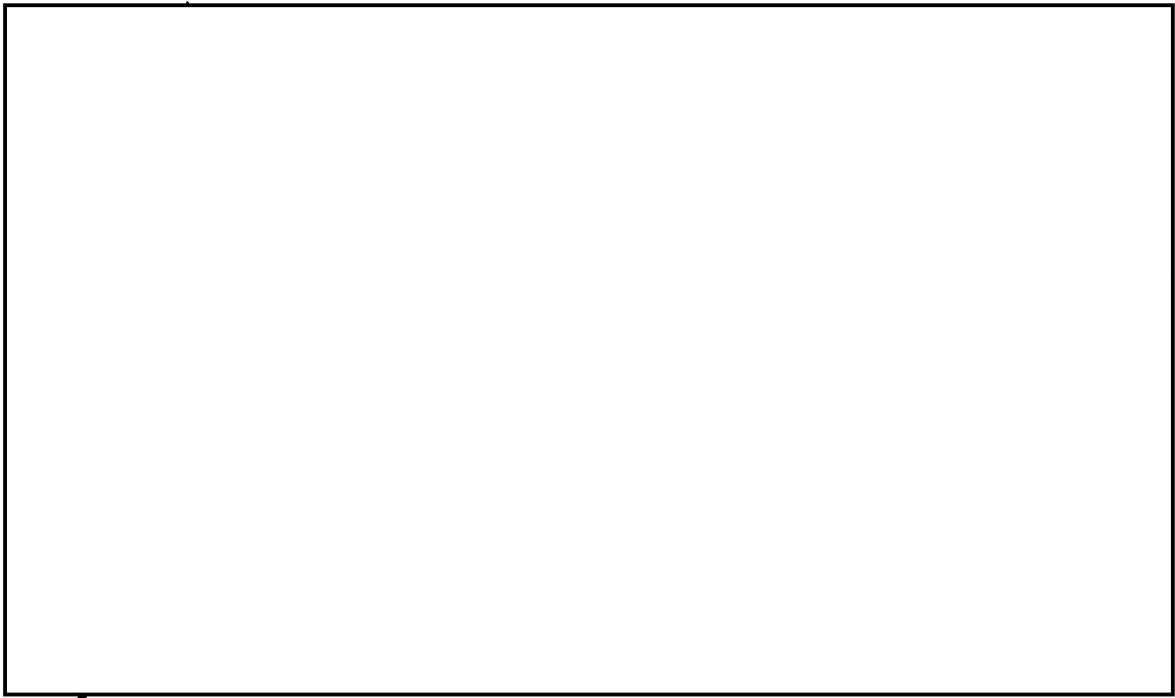


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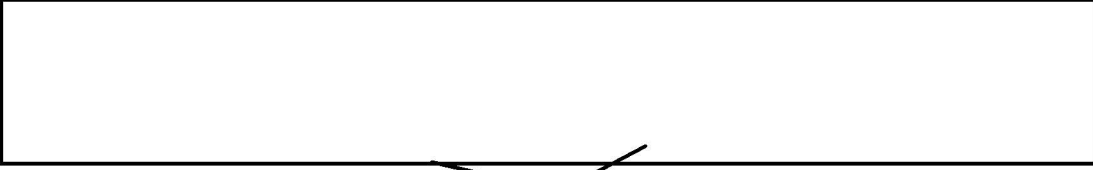
⁴ The FBI notes that



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II. Processes and Procedures to Prevent Affirmative Use (U)

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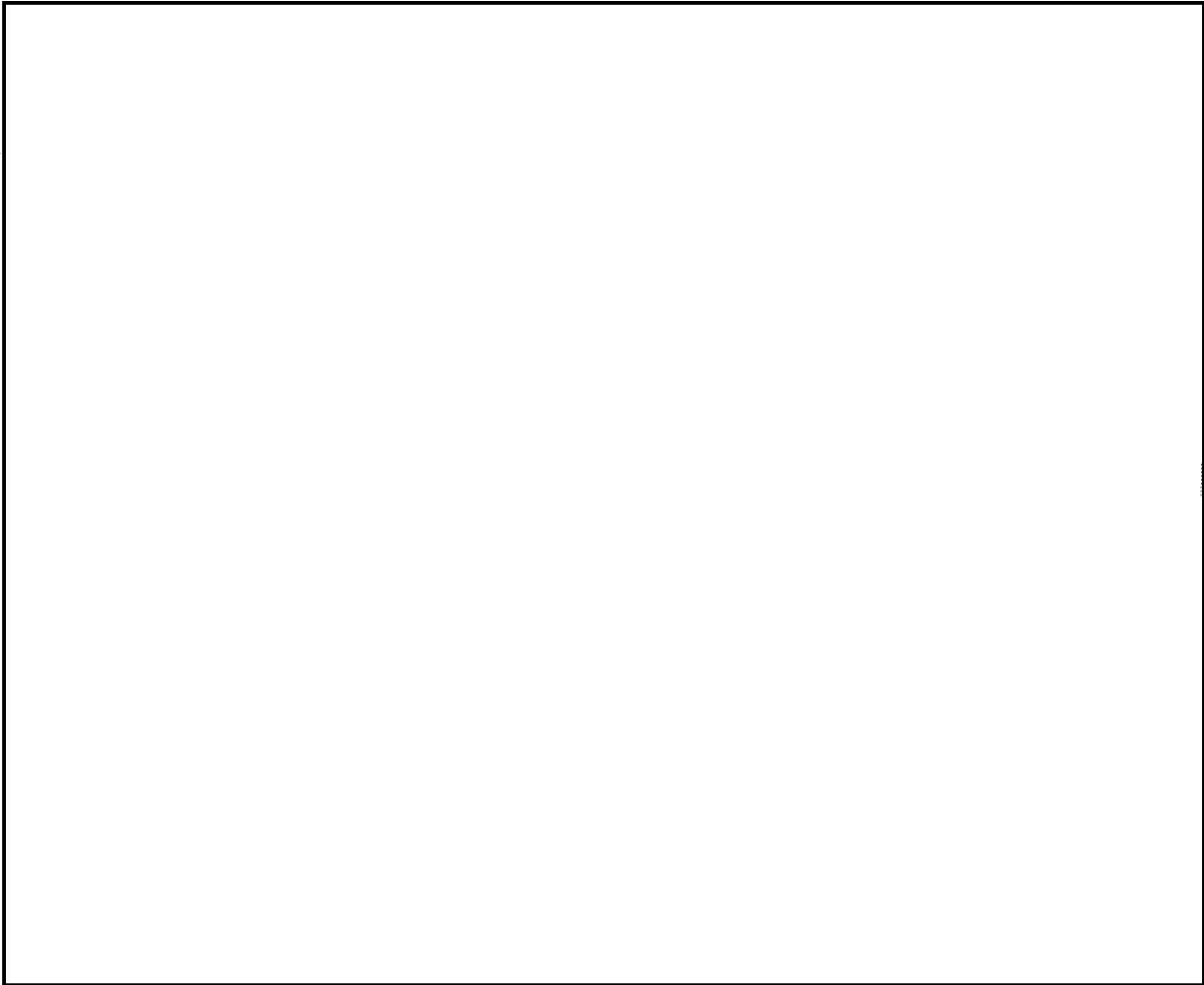
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B. Processes for the Transfer of Pen Register Information
into FBI Databases (U)



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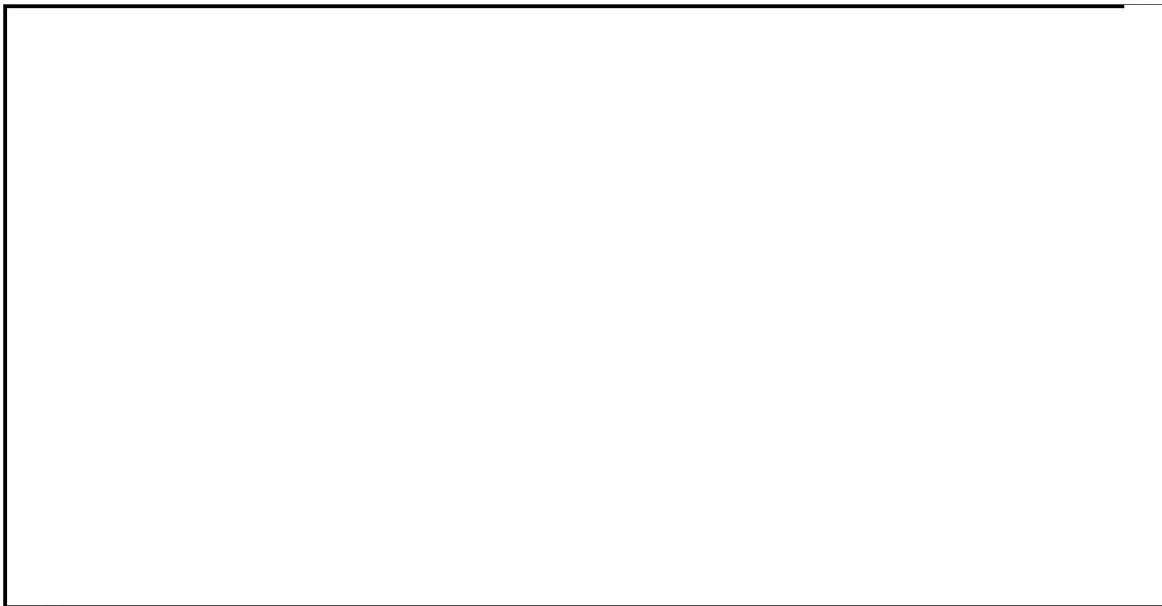
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C. Processes and Procedures for Handling
 in FBI Databases and Systems (U)

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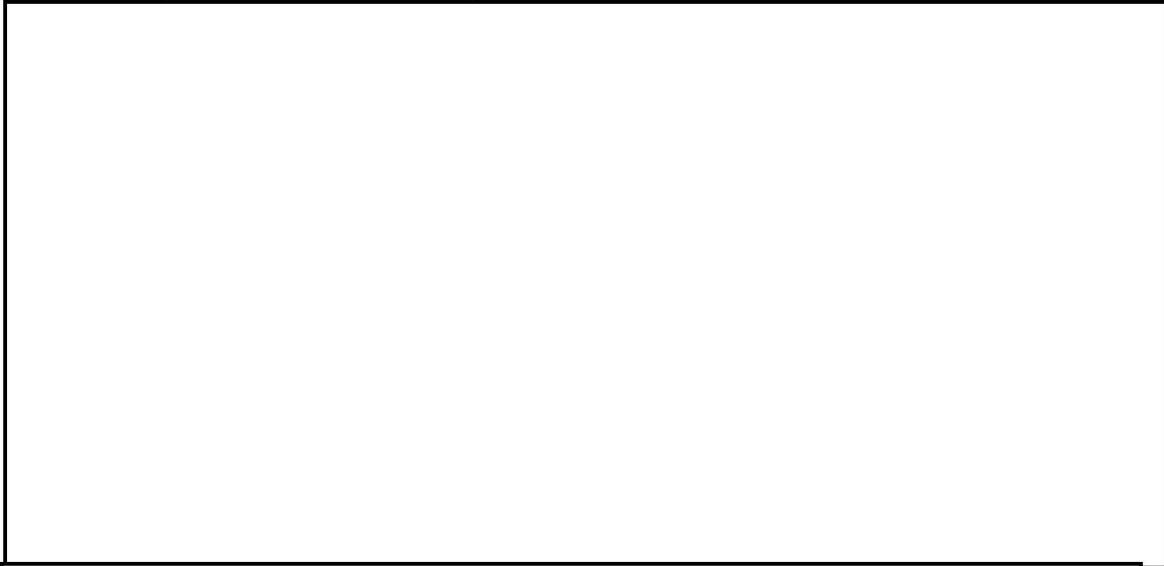
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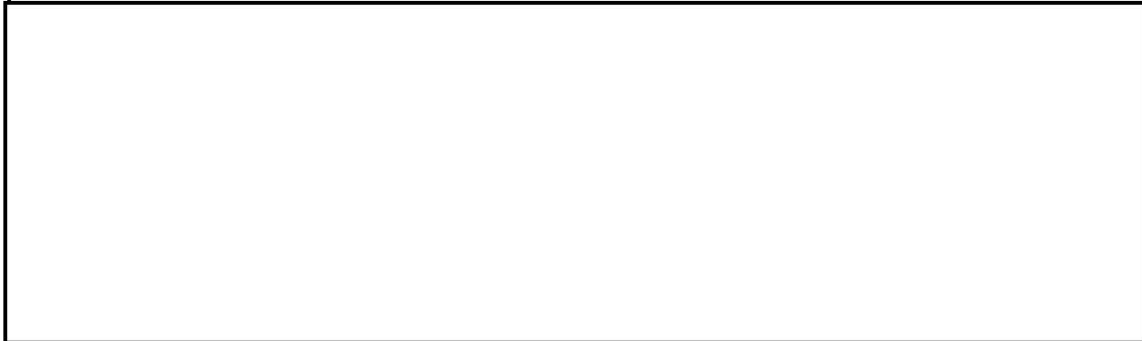
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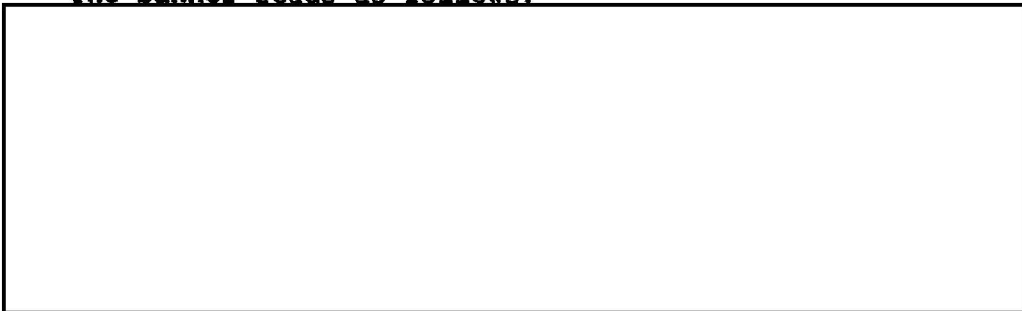
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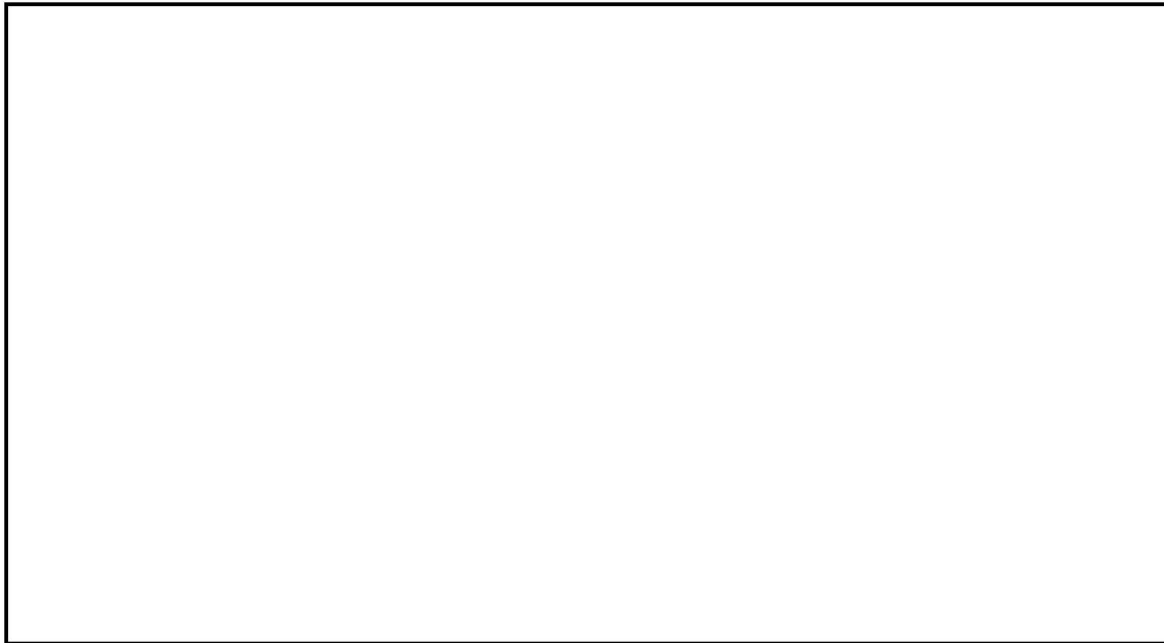
¹³ The banner reads as follows:



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WARNING:



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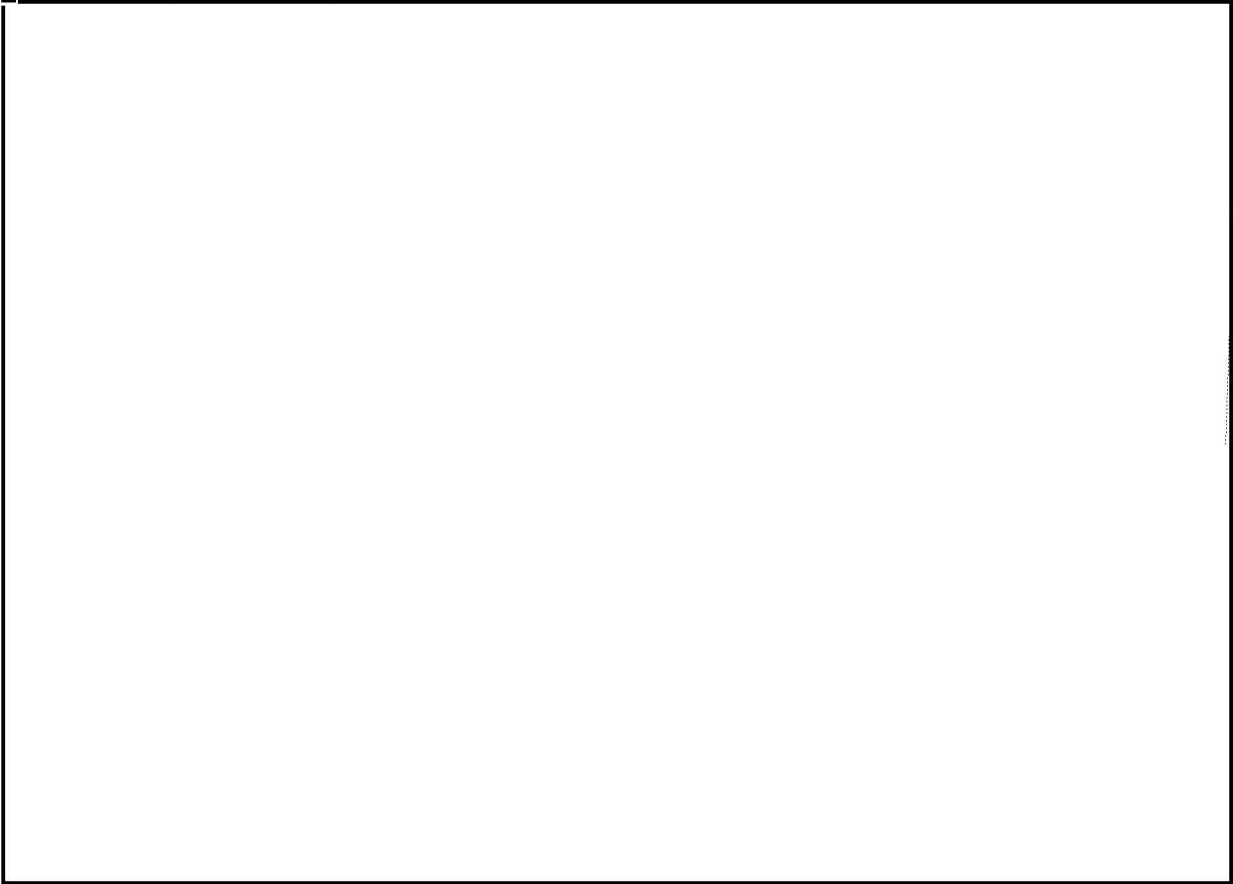
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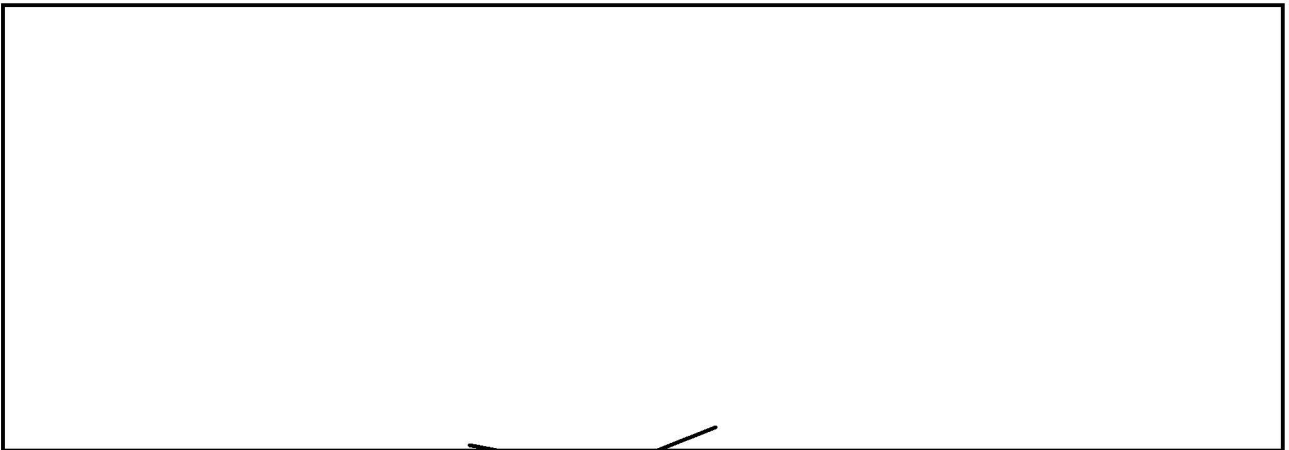


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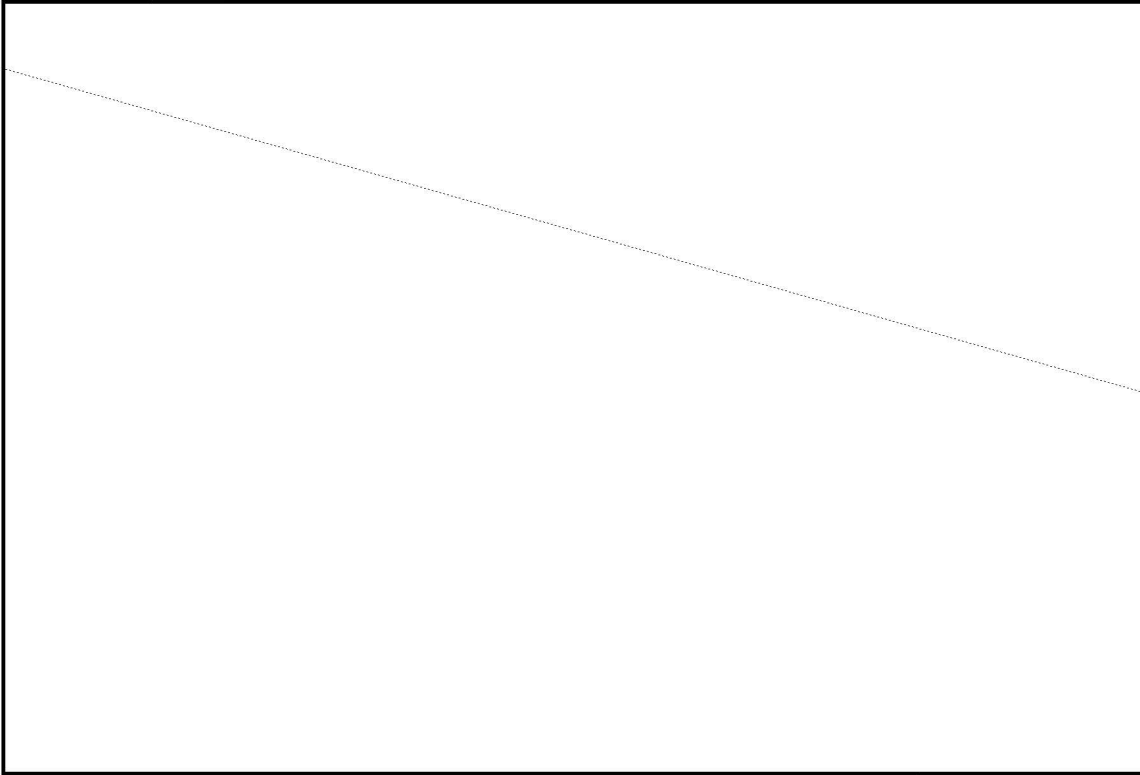
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5. General Procedures (U)

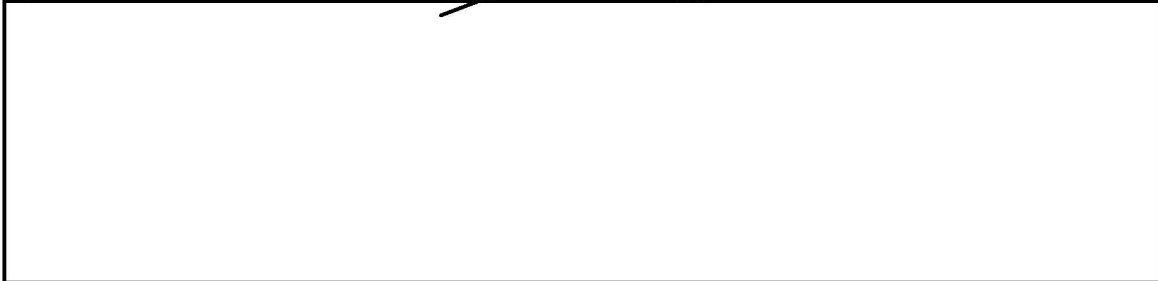


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¹⁵ This provision provides:

Law enforcement agencies are required under Title 18, USC, Section 3121(c) to install and use technology that is "reasonably available" in order to limit the information obtained from a pen register to "the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications. Section 3121(c) imposes an affirmative obligation to operate a pen register or trap and trace device in a manner that, to the extent feasible with reasonably available technology, will minimize any possible overcollection while still allowing the device to collect all of the limited information authorized. To the extent that, despite the use of "reasonably available" technology, deployment of a pen register does result in the incidental collection of some portion of "content," such "content" may not be used for any affirmative investigative purpose, except in a rare case in order to prevent an immediate danger of death, serious physical injury, or harm to the national security. "Content" includes any information concerning the substance, purport, or meaning of a communication. Questions as to what particular types of information constitute content should be directed to the Investigative Law Unit, Office of the General Counsel.

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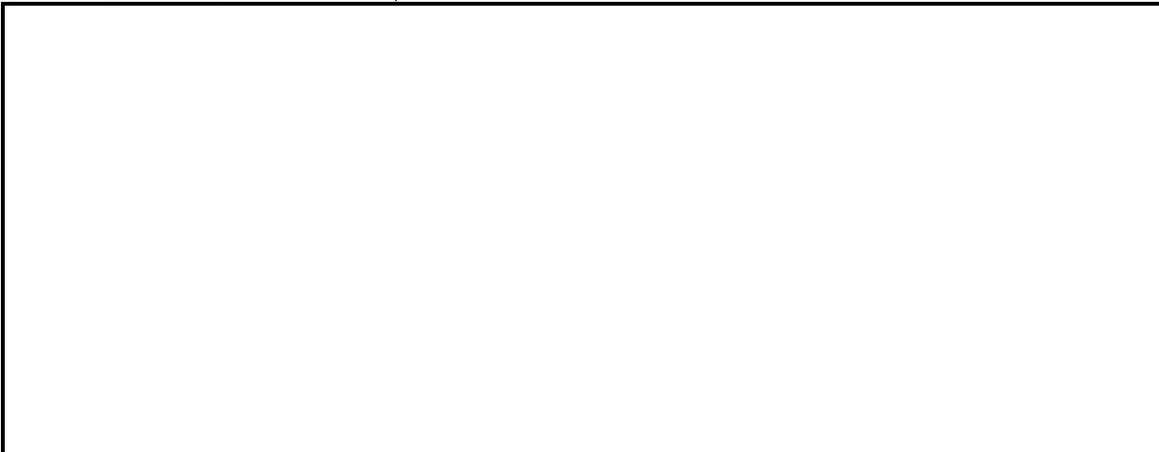


On May 24, 2002, The Deputy Attorney General issued a Memorandum setting forth the Justice Department's policy regarding avoidance of "overcollection" in the use of pen registers and trap and trace devices deployed under 18

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Although the Deputy Attorney General's directive and the November 27, 2002, FBI communication pertained only to the collection of pen register information under Title 18 and specifically not to FISA, we note that the FISA pen register statute at 50 U.S.C. § 1841(2) adopts the Title 18 definition of "pen register" (18 U.S.C. § 3127(3)), and the prohibition on collecting content is contained, in part, within the definition of a pen register in 18 U.S.C. § 3127(3). (U)



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U.S.C. § 3121, et seq. This policy prohibits the affirmative investigative use of any "content" collected despite the use of reasonably available technology, except to prevent an immediate danger of death, serious physical injury, or harm to the national security. This policy memorandum may be found on



On June 3, 2002, this memorandum was distributed by electronic mail to all United States Attorneys, First Assistant United States Attorneys and Criminal Chiefs. Available from FBI's Intranet at



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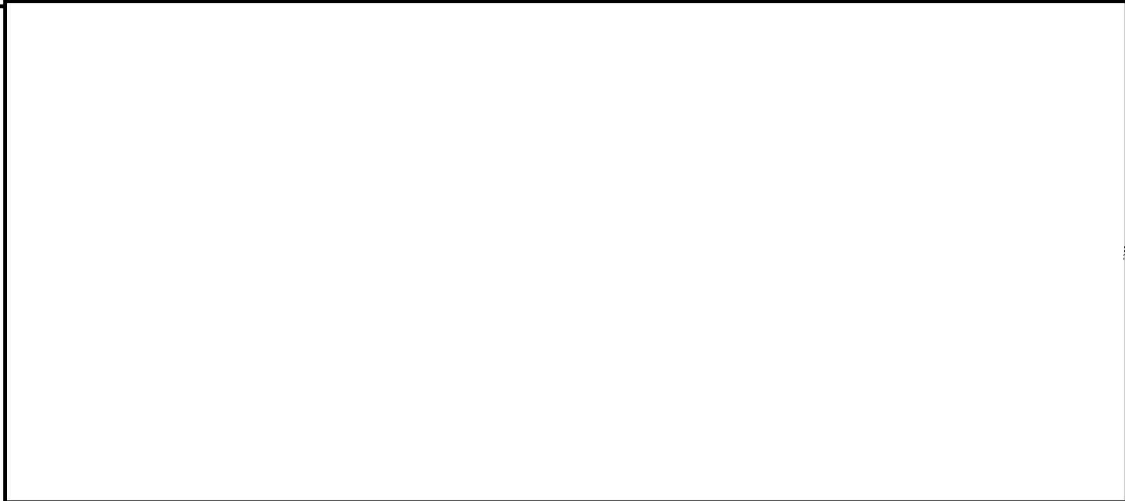
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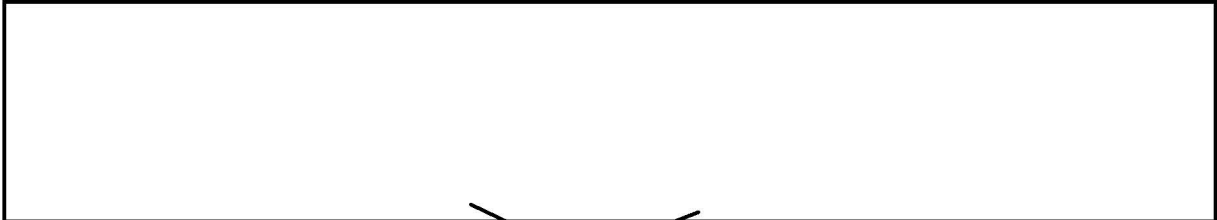
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¹⁷ The website contains the following notice:



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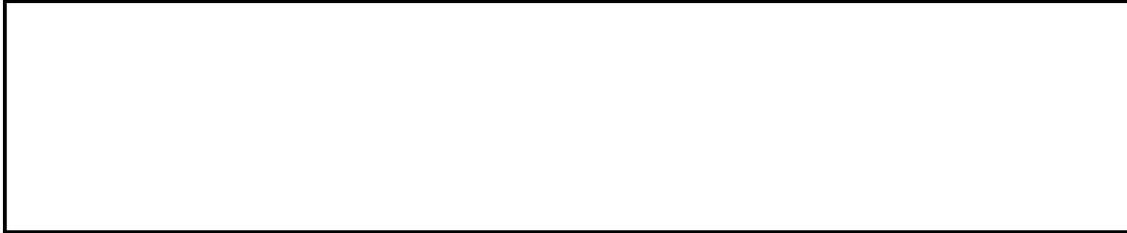
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D. Proposed Procedures (U)

In order to further ensure that no affirmative investigative use is made 



1. Additional Guidance (U)



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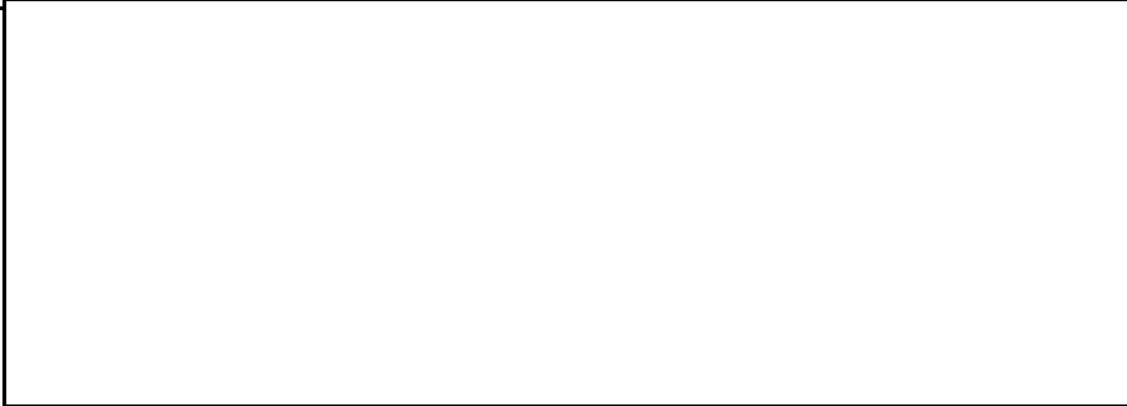
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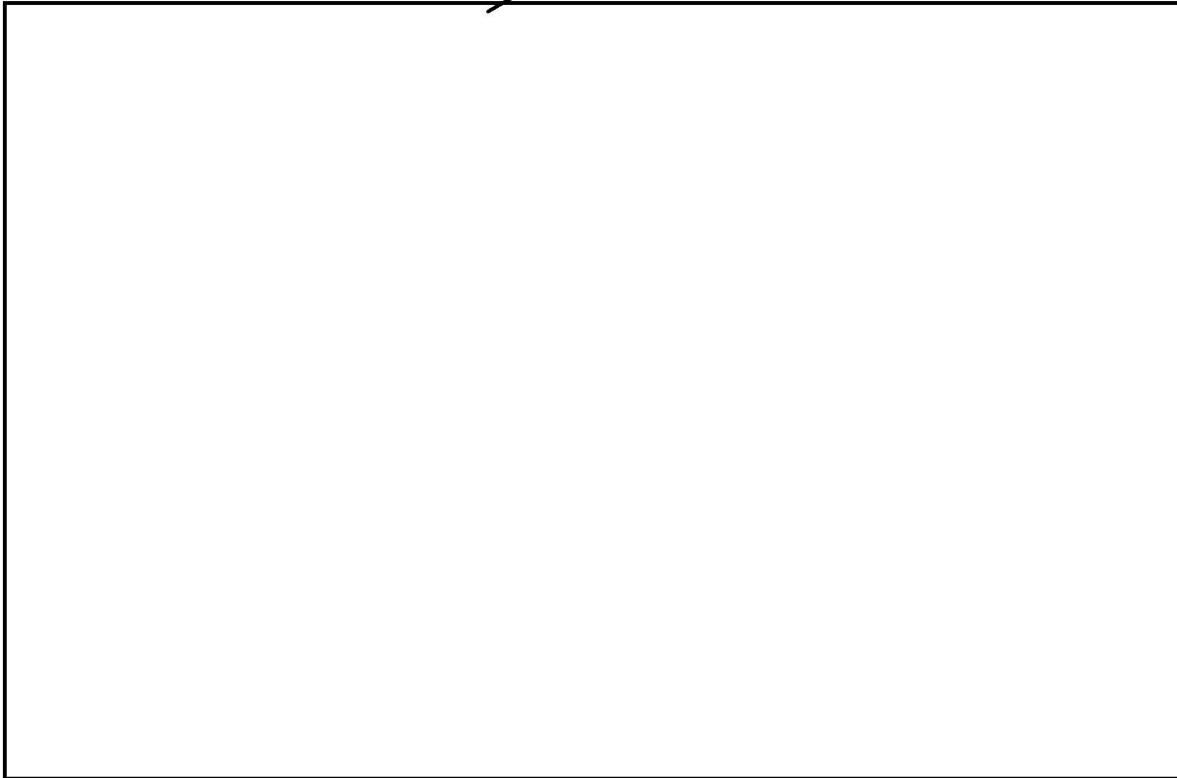


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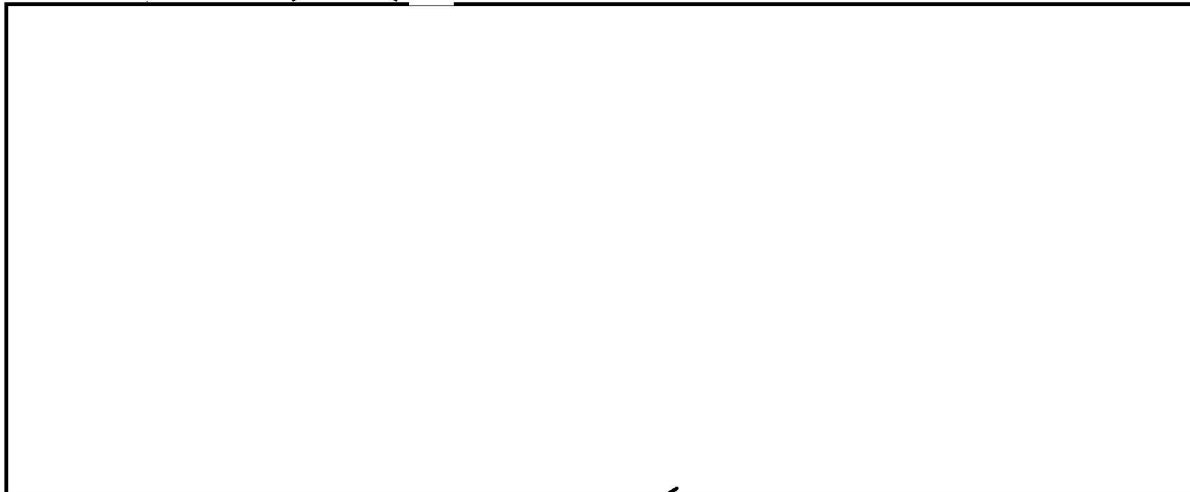
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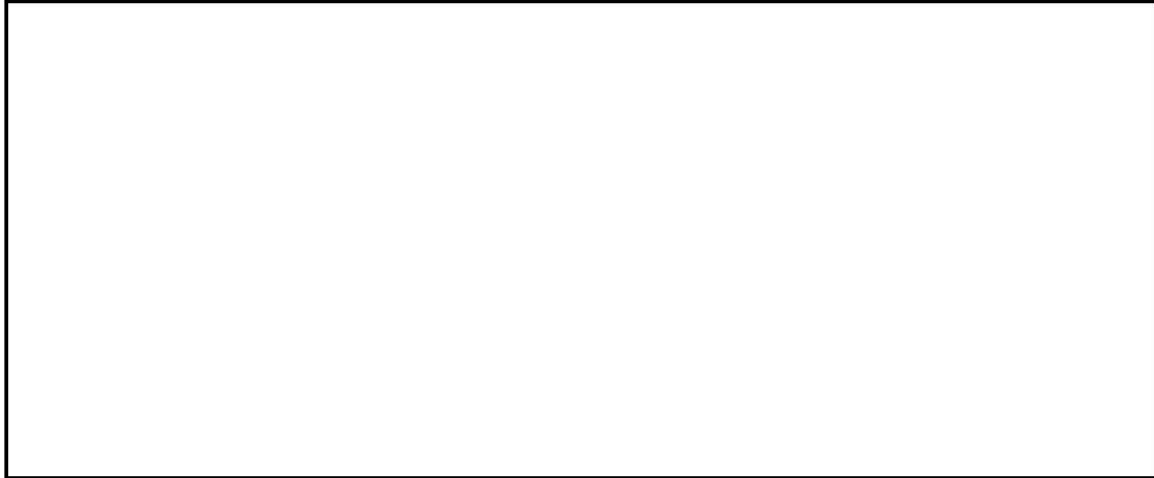
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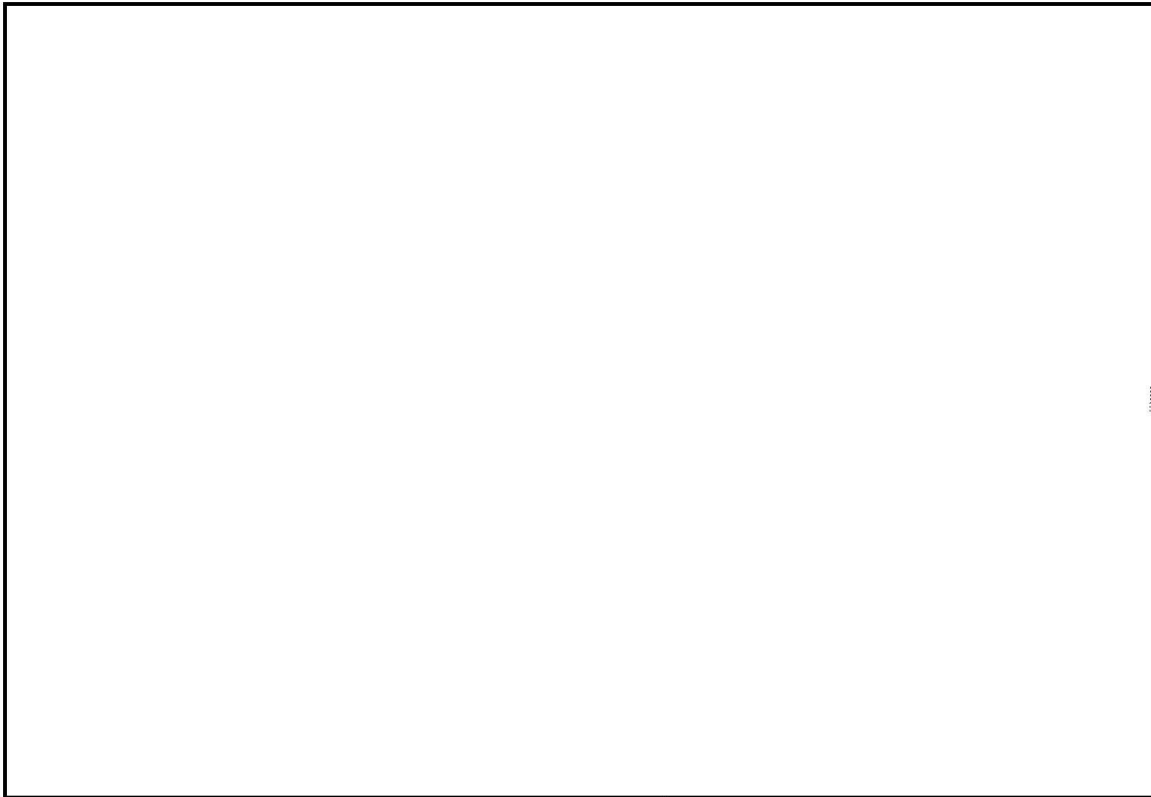
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III. Procedures to Notify the Court (U)



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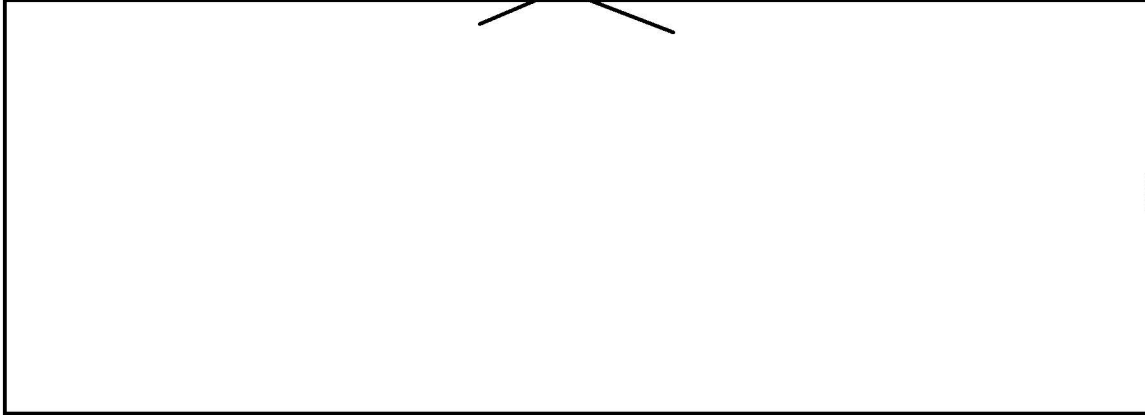


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Respectfully submitted,

James A. Baker
Counsel for Intelligence Policy



Attorneys

National Security Division
United States Department of Justice

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VERIFICATION (U)

I, [REDACTED], declare under penalty of perjury that the information set forth in this report regarding the processes and systems through which telephone pen register collections under the Foreign Intelligence Surveillance Act are conducted and enter FBI databases and systems is true and correct to the best of my personal knowledge, information and belief. Executed pursuant to Title 28, United States Code, § 1746 on

_____. (U)

Federal Bureau of Investigation

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