

# THE LATEST PHONE DRAGNET ADDITION: IMMINENT DEATH OVERRIDES

As I noted in this post, I Con the Record has released the latest phone dragnet order, this one signed by Oregon judge Michael Mosman.

As with the last order (which added language ensuring the government do a First Amendment review even when obtaining emergency orders), this one made a subtle, but potentially very significant addition. In a long-running footnote noting that technical controls prevented analysts from chaining on a selector that was not RAS approved,

<sup>10</sup> The Court understands that NSA has implemented technical controls, which preclude any query for intelligence analysis purposes with a non-RAS-approved seed.

This order added language noting that NSA could override those controls in case of imminent threat to human life.

<sup>10</sup> The Court understands that NSA has implemented technical controls, which preclude any query for intelligence analysis purposes with a non-RAS-approved seed and that in cases of imminent threat to human life NSA may bypass these technical controls, subject to management controls, to conduct queries using RAS-approved seeds.

I'm glad they specify "human life" here – because elsewhere NSA has defined "life" to include "property." And if this is truly about overriding technical controls in case of threat to life, I'm fine with the change. And while the footnote isn't terrifically clear, I assume this might be used (and since it shows up in the order, might have been used) in a case where NSA was sure a selector was Reasonably Associated with a terrorist affiliate, but had not gone through the formal approval process yet, and therefore had to override the software.

All that said, one thing I saw a remarkable amount of in the IOB reports was software controls (particularly purging functions, but also access controls) that weren't working as

intended.

Let's hope this is just a way to turn off the safeguards in cases where really necessary and not another (as the IOB repeatedly call software failures) "glitch."