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DATE 10-05-2010 BY 65179 DHHinja

The Foreign Intelligence Surveillance Act of 1978,

New Title VII

"Additional Procedures Regarding Certain Persons Outside the United States," Sections 701-708

Added to FISA by the FISA Amendments Act of 2008 (FAA) on July 10, 2008

UNCLASSIFIED 3
FM-644

Traditional FISA

Electronic Surveillance under Title I of FISA, Sectio

Title 111 of FISA, Sections 301-309 (50 U.S.C. §§ 18

Traditional FISA Basics

"Electronic surveillance" (ELSUR)
) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended
to be received by a particular, known United States person who is in
the United States, if the contents are acquired by intentionally targeting
that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement (LE) purposes;
(2) the acquisition . . . of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of Title 18;
(3) the intentional acquisition . . . of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for LE purposes,
and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of . . .

Traditional FISA Basics

"Physical Search"
any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or alteration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) "electronic surveillance" . . ., or (B) the acquisition by the USG of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance . . .

UNCLASSIFIED 7 FAA-647

Traditional F1SA Basics

Probable Cause

The FBI must provide facts establishing probable cause to believe:

the target is a "foreign power" or "agent of foreign power', and
the facilities or places to be surveilled are being used or about to be used by the target, and/or
the premises or property to be searched contains foreign intelligence information and is or is about to be owned, used, possessed by, or is in transit to or from the target.

UNCLASSIFIED 8
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Tradicofonal FISA aseics Individualized Foreign Intelligence TELSUR or phyeical search under tadicofonal FISA also requires:

New Title VII

"Additional Procedures Regarding Certain Persons Outside the United States," Sections 701-708

UNCLASSIFIED 10
FAA-650

New Title VII, cont'd

701: Definitions
702: Targeting Non-USPERs 703-705: Targeting USPERs 706: Use of Title VII Information 707: Congressional Oversight 708: Savings Provision

UNCLASSIFIED 11 FAA-651

Section 702

(50 U.S.C. §1881a)

Procedures for targeting certain persons outside the United States other than United States persons
• Permits the USG to acquire foreign intelligence
information by targeting non-USPERs reasonably believed to be located outside the United States, when the acquisition involves the assistance of an electronic communication service provider, without the need to
obtain individualized FISC Orders.

• Acquisitions under Section 702 are conducted under
certifications jointly authorized by the AG and DNI, which
include targeting and minimization procedures, filed with
the FISC.

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Section 702, cont'd

Unlike traditional FISAs, there is no need for a judicial (i.e., FISC) determination that there is probable cause to believe that individual targets are "foreign powers" or "agents of a foreign power" and that they

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A Quick Review of "Traditional FISA"

UNCLASSIFIED 4 FAA-654

OPCA-20 (12-3-96)

FEDERAL BUREAU OF INVESTIGATION
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1 Page withheld entirely at this location in the file. One or more of the following
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Section 552 Section 552a

0(b)(1) o(b)(7)(A) o(d)(5)
o(b)(2) 0(b)(7)(B) 0(j)(2)
o(b)(3) o(b)(7)(C) o(k)(1)
0(b)(7)(D) o(k)(2)
0(b)(7)(E) o(k)(3)
0(b)(7)(F) o(k)(4)
o (b)(4) o(b)(8) 0(k)(5)
o (b)(5) o(b)(9) o(k)(6)
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