The Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA) Significant Changes to FISA

In General

- FAA became law on July 10, 2008
- Repealed most provisions of the Protect America Act of 2007 (PAA) - specifically: Sections 105A, 105B, and 105C of FISA
- Added to FISA a new Title VII, "Additional Procedures Regarding Certain Persons Outside the United States," §§ 701-708

In General, cont'd

The FAA amended FISA in numerous ways. Aside from the addition of Title VII, the changes most significant to the FBI include . . .

Extension of EA Periods

The FAA extended the period to apply for and obtain a Foreign Intelligence Surveillance Court (FISC) Order after emergency authorization (EA) by the Attorney General (AG), as follows:

- 3 days to 7 days for Electronic Surveillance and/or Physical Search (traditional FISA)
- 2 days to 7 days for Pen Register and Trap and Trace (PR/TT)

New Definitions

Changed definitions of:
- "foreign power" to add an entity not substantially composed of United States persons (USPERs) that is engaged in the international proliferation of weapons of mass destruction;
- "agent of foreign power" to add individuals who are not USPERs who engage in the international proliferation of weapons of mass destruction, and
- "foreign intelligence information" to include "international proliferation of weapons of mass destruction" in 18U.S.C.(1)(E)

New Definitions, cont'd

Added a definition of "weapon of mass destruction":

1. any explosive, incendiary, or poison gas device that is designed, intended, or has the capability to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;
2. any weapon involving a biological agent, toxin, or vector, that is designed, intended, or has the capability to cause death, illness, or serious bodily injury to a significant number of persons;
3. any weapon that is designed, intended, or has the capability to release radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.
"Traditional" FISA, cont’d

Process for requesting a traditional FISA and its underlying requirements have not changed:
- Use FISAMS
- Accuracy Checks/Sub-Woods File
- EA may be authorized by the AG

New Title VII

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

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

Section 702, cont’d

LIMITATIONS: An acquisition authorized under Section 702—
(1) may not intentionally target any person known at the time of acquisition to be located in the United States;
(2) may not intentionally target a person reasonably believed to be located outside the United States, if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
(3) may not intentionally target an USPER reasonably believed to be located outside the United States;
(4) may not intentionally acquire any communication as to which the sender and all intended or incidental addressees are known at the time of the acquisition to be located in the United States; and
(5) shall be conducted in a manner consistent with the Fourth Amendment to the Constitution of the United States.

Section 702, cont’d

Process

- AG/DNI certification, including targeting and minimization procedures, filed with FISC with supporting affidavit from Director of the FBI.
- If the FISC finds the certification contains all the required elements, and the targeting and minimization procedures are consistent with the requirements of Section 702 and the Fourth Amendment, the FISC shall enter an Order approving the certification and use of the procedures.
- Emergency provisions are available for "exigent circumstances".
Questions?

- CDC (if at a Field Office)
- Office of the General Counsel (OGC)
  National Security Law Branch (NSLB)
  Main number: [Redacted]