The Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA); Section 702

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- Repealed most provisions of the Protect America Act of 2007 (PAA) – specifically: Sections 105A, 105B, and 105C of FISA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

"Section 702" and "FAA" are NOT interchangeable

- When referring to your work, please call it Section 702, not FAA
- FAA encompasses several other authorities pertaining to USPERs, e.g., 703, 704, 705(b)
- "Section 702" narrows the reference to the appropriate legal authority

Outside the Scope
Section 702 Overview
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-U.S. Persons (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 for individualized FISC Orders.
- A significant purpose of the acquisition must be to obtain foreign intelligence information.

Section 702 "Foreign Intelligence"
- Information that relates to, and if concerning a USP is necessary to, the ability of the US to protect against:
  - actual or potential attack or other grave hostile acts of FP/agent;
  - sabotage or international terrorism by FP/agent;
  - clandestine intelligence activities by an intelligence service or network of FP or by an agent of FP; or
  - sabotage, international terrorism, or the international proliferation of weapons of mass destruction by FP/agent;
- OR
- Information with respect to a foreign power or foreign territory that relates to, and if concerning a USP is necessary to:
  - National defense or security of US; or
  - Conduct of US foreign affairs.

Section 702 "Acquire Foreign Intelligence Information"
- Targeting Procedures
  - Submitted by AG & DNI and approved by Foreign Intelligence Surveillance Court
  - Due diligence to establish
    - User's USPER status
    - Reasonableness of belief the target is located outside the U.S.

FISA (Traditional & 702) "U.S. Person"
- Citizen of the United States
- Permanent Resident Alien (Green Card)
- An association with members composed substantially of US citizens of permanent resident aliens.
- A corporation incorporated in the US, except a foreign power.

Section 702 "Assistance of an Electronic Communication Service Provider"
- Collections occur in U.S.
Section 702

- "Significant Purpose"
  - Collection does not have to be solely motivated by a desire to obtain foreign intelligence
  - Only needs to be a significant purpose of the collection
  - Same as "Traditional" FISAs

Section 702

- Noteworthy aspects of 702
  - No foreign power requirement
    - User need not be a foreign power or agent of foreign power
  - Significant purpose must be to obtain foreign intelligence
  - Relevant inquiry is the USPER status and "Treatments of the world"

- "Reverse Targeting" prohibited
  - Cannot collect on non-USPER when purpose is to obtain communications by USPER or someone in US

Handling 702 Data

Outside the Scope
702 Standard Minimization Procedures
- Nearly identical to the "Traditional" SMPs
  - USPER definition
  - Foreign Intelligence definition

702 Case Coordinators

Outside the Scope
702 Case Coordinators

Questions?

National Security Law Branch
Ext. b2
Room 7947