

# The Foreign Intelligence Surveillance Act of 1978, as amended (FISA): Title VII

This briefing is  
~~SECRET~~//NOFORN. FAA-642



## In General

The Foreign Intelligence Surveillance Act of 1978, as amended, (FISA) provides procedures for:

- the conduct of electronic surveillance and physical searches (“traditional FISAs”),
- the use of pen registers and trap and trace devices,
- access to certain business records, and
- **the targeting of certain persons outside the United States**

to obtain foreign intelligence information.



## New Title VII

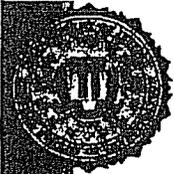
- “Additional Procedures Regarding Certain Persons Outside the United States,” Sections 701-708
- Added to FISA by the FISA Amendments Act of 2008 (FAA) on July 10, 2008

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# Traditional FISA

- Electronic Surveillance under Title I of FISA, Sections 101-112 (50 U.S.C. §§ 1801-1812)
- Physical Search under Title III of FISA, Sections 301-309 (50 U.S.C. §§ 1821-1829)



# Traditional FISA Basics

## "Electronic surveillance" (ELSUR)

- (1) 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 . . . [a] **device in the United States for monitoring to acquire information, other than from a wire or radio communication**, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for LE purposes.



## 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 . . .



## Traditional FISA 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.



## Traditional FISA Basics

ELSUR or physical search under traditional FISA also requires:

- Individualized Foreign Intelligence Surveillance Court (FISC) Orders (or AG Certifications)
- Use of minimization procedures - in most cases, the SMPs



# New Title VII

## “Additional Procedures Regarding Certain Persons Outside the United States,” Sections 701-708

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## 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 (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.
- A significant purpose of the acquisition must be to obtain foreign intelligence information.



## 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 are using or about to use specific facilities or places that will be subject to ELSUR.

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# A Quick Review of “Traditional FISA”

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Section 552

Section 552a

- (b)(1)
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- (b)(7)(A)
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1 Bates FAA-655 was not considered for release as it is a duplicate of Bates FAA-645, which is being released.

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