



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

To: Litigation Section, Office of Intelligence

From: Stuart J. Evans
Deputy Assistant Attorney General for Intelligence

Re: Restriction Regarding the Use of FISA Section 702 Information in Criminal Proceedings Against United States Persons

This memorandum serves to document a policy restriction imposed on authorizations of the use of information acquired from Section 702 of the Foreign Intelligence Surveillance Act (FISA) against United States persons in criminal proceedings.

For background, in January 2014, in response to a recommendation from the President's Review Group on Intelligence and Communication Technologies, the President directed the Attorney General and Director of National Intelligence to place additional restrictions on the government's ability to use in criminal cases communications between Americans and foreign citizens incidentally collected under Section 702. The Department of Justice and the Intelligence Community, in consultation with the Administration, subsequently adopted a policy restriction, which was announced in the Intelligence Community's Signals Intelligence Reform 2015 Anniversary Report, published on February 3, 2015. While this restriction was formalized in February 2015, it is also fully consistent with the Department's past practice regarding authorizations for the use of Section 702 acquired information.

Specifically, in addition to any other limitations imposed by applicable law, including FISA, any communication to or from, or information about, a U.S. person acquired under Section 702 of FISA shall not be introduced as evidence against that U.S. person in any criminal proceeding except:

- (1) with the prior approval of the Attorney General, and
- (2) in
 - (A) criminal proceedings related to national security (such as terrorism, proliferation, espionage, or cybersecurity), or
 - (B) other prosecutions of crimes involving
 - (i) death;

- (ii) kidnapping;
- (iii) substantial bodily harm;
- (iv) conduct that constitutes a criminal offense that is a specified offense against a minor as defined in 42 U.S.C. § 16911;
- (v) incapacitation or destruction of critical infrastructure as defined in 42 U.S.C. § 5195c(e);
- (vi) cybersecurity;
- (vii) transnational crime; or
- (viii) human trafficking.

Requests for authority to use Section 702 acquisitions in criminal proceedings against United States persons must comply with the above restriction. Prior to recommending that the Attorney General, as defined by FISA, authorize such use, Office of Intelligence personnel will ensure that the requested use and the recommended authorization complies with the above policy. This policy will remain in effect unless modified in the future by the Attorney General and Director of National Intelligence.

This policy is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

Cc: Deputy Assistant Attorneys General, National Security Division
Chief, Counterterrorism Section
Chief, Counterintelligence and Export Control Section