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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

200 AUG 19 PM 3:24
CLERK SUTTON

IN RE ATTORNEY GENERAL GUIDELINES
ADOPTED PURSUANT TO 50 U.S.C. § 1881a(f)(1).
(U)

UNDER SEAL

Docket No: [REDACTED]

GOVERNMENT'S EX PARTE SUBMISSION OF ATTORNEY GENERAL
GUIDELINES (U)

In accordance with subsection 702(f)(2)(C) of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"), the United States of America, by and through the undersigned Department of Justice attorney, hereby submits ex parte the attached "Attorney General's Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as Amended."

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Classified by: Matthew G. Olsen, Deputy Assistant

Attorney General, NSD, DOJ

Reason: 1.4 (c)

Declassify on: 6 August 2033

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These guidelines have been adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsection 702(f)(1) of the Act. (U)

Respectfully submitted,
(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

National Security Division
United States Department of Justice

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**THE ATTORNEY GENERAL'S GUIDELINES FOR THE ACQUISITION OF
FOREIGN INTELLIGENCE INFORMATION PURSUANT TO THE FOREIGN
INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED**

INTRODUCTION (U)

These guidelines have been adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsection 702(f)(1) of the Foreign Intelligence Surveillance Act of 1978, as amended ("the Act"). They govern the implementation of acquisitions of foreign intelligence information under the Act. (U)

ACQUISITIONS UNDER SUBSECTION 702(a) OF THE ACT (U)

All acquisitions conducted under subsection 702(a) of the Act shall be conducted in compliance with the following limitations:

- 1) An acquisition authorized under subsection 702(a) of the Act may not intentionally target any person known at the time of acquisition to be located in the United States.** The targeting of a person under subsection 702(a) may be done only in accordance with targeting procedures that have been adopted by the Attorney General in consultation with the Director of National Intelligence and that are reasonably designed to ensure that only persons reasonably believed to be located outside the United States are targeted. Any targeting procedures adopted by the Attorney General in consultation with the Director of National Intelligence also shall include measures for detecting those occasions when a person who when targeted was reasonably believed to be located overseas has since entered the United States. Such targeting procedures also shall require that when such an

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Classified by: The Attorney General
Reason: 1.4(c)
Declassify on: 1 August 2033

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when such an occasion is detected, all acquisition from the targeted person shall be terminated without delay. ~~(S)~~

- 2) An acquisition authorized under subsection 702(a) 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.** A non-United States person reasonably believed to be located outside the United States may not be targeted under subsection 702(a) unless a significant purpose of the targeting is to acquire foreign intelligence information that such person possesses, is reasonably expected to receive, and/or is likely to communicate. ~~(S)~~

If, at any time an agency targets a person, it has as its purpose for targeting that person the targeting of a particular, known person reasonably believed to be in the United States, it must follow the prescribed procedures under the Foreign Intelligence Surveillance Act and other governing authorities that apply for targeting persons inside the U.S. ~~(S)~~

- 3) An acquisition authorized under subsection 702(a) may not intentionally target a United States person reasonably believed to be located outside the United States.** Any targeting procedures adopted by the Attorney General, in consultation with the Director of National Intelligence, shall include a requirement that, in targeting a person reasonably believed to be located outside the United States, due diligence is exercised to inform the reasonable belief that the target of the acquisition is not a United States person. [REDACTED]

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If, at any time an agency targets a person, it is intentionally targeting a United States person reasonably believed to be outside the United States, it must follow the prescribed procedures under the Foreign Intelligence Surveillance Act and other governing authorities that apply for targeting U.S. persons abroad. ~~(S)~~

- 4) An acquisition authorized under subsection 702(a) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States.** Any targeting procedures adopted by the Attorney General in consultation with the Director of National Intelligence shall include measures for detecting those occasions when a person who when targeted was reasonably believed to be located overseas has since entered the United States. Such targeting procedures also shall require that when such an occasion is detected, all acquisition from the targeted person shall be terminated without delay. ~~(S)~~
- 5) An acquisition authorized under subsection 702(a) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.** Any communication to, from, or concerning a United States person that is incidentally acquired under subsection 702(a) of the Act shall be processed in accordance with minimization procedures which meet the definition of minimization procedures in subsections 101(h) and 301(4) of the Act and

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which have been adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsection 702(e) of the Act. (U)

Any acquisition of foreign intelligence information under subsection 702(a) that does not comply with each of these limitations is prohibited. Furthermore, an acquisition authorized under subsection 702(a) shall be conducted only in accordance with:

- 1) targeting and minimization procedures adopted by the Attorney General, in consultation with the Director of National Intelligence, pursuant to subsections 702(d) and (e) of the Act; and
- 2) upon submission of a certification in accordance with subsection 702(g) of the Act, such certification. (U)

Specific guidance regarding targeting. Intelligence agencies may not designate a nominal non-U.S. person foreign target when the actual target is a U.S. communicant with whom that foreign target is known to be in contact.



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ACQUISITIONS FOR WHICH AN APPLICATION FOR A COURT ORDER UNDER THE ACT MUST BE FILED (U)

Any time an element of the Intelligence Community seeks to acquire foreign intelligence information by conducting electronic surveillance, pen register or trap and trace surveillance, or physical search, as defined in the Act, of any person known at the time of acquisition to be located in the United States, an application for a court order under the Act must be filed. Prior to the making of such application, the Attorney General may authorize emergency collection as provided in the Act. (U)

Any time an element of the Intelligence Community seeks to acquire foreign intelligence information by intentionally targeting a United States person reasonably believed to be located outside the United States, and such acquisition is conducted within the United States and constitutes electronic surveillance or the acquisition of [REDACTED]

[REDACTED] an application for a court order under the Act must be filed and authority to do so must be obtained from the Attorney General pursuant to Section 2.5 of Executive Order

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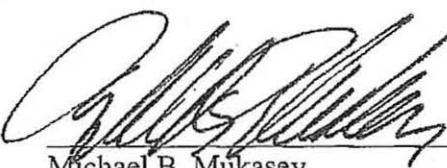
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12333. Prior to the making of such application, the Attorney General may authorize emergency acquisition as provided in the Act. (U)

Any time an element of the Intelligence Community seeks to acquire foreign intelligence information by intentionally targeting a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, and such acquisition is conducted outside the United States, an application for a court order under the Act must be filed and authority to do so must be obtained from the Attorney General pursuant to Section 2.5 of Executive Order 12333. Prior to the making of such application, the Attorney General may authorize emergency acquisition as provided in the Act. (U)

AUG 5 2008

Date



Michael B. Mukasey
Attorney General of the United States

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