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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

CR No. 3:16-cr-00061-MO

Plaintiff,

DEFENDANT'S MOTION TO
COMPEL NOTICE OF
SURVEILLANCE AND FOR
PRODUCTION OF RELATED
DISCOVERY

v.

JOSEPH O'SHAUGHNESSY,

Defendant.

ORAL ARGUMENT REQUESTED

The defendant, Joseph O'Shaughnessy, through counsel, moves the government for notice of surveillance and for production of discovery related to surveillance in accordance with Federal Rule of Criminal Procedure 16, 18 U.S.C. § 3504, and the United States Constitution, amend. IV, V & VI. This motion relies on the argument and authorities set forth in the accompanying Memorandum In Support, filed herewith.

Statement Of Conferral

The defense has conferred with the government regarding the contents of this motion.

On May 11, 2016, I received a letter stating that the government opposes the motion.

Respectfully submitted on May 11, 2016.

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Plaintiff,

v.

JOSEPH O'SHAUGHNESSY,

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
NOTICE OF SURVEILLANCE AND
FOR PRODUCTION OF RELATED
DISCOVERY**

Defendant.

I. Introduction

Joseph O'Shaughnessy and twenty-five other defendants are charged in the District of Oregon in relation to a protest at the Malheur National Wildlife Refuge (MNWR) in early 2016. The nature of the case has been set forth in numerous documents to this Court and will not be repeated here. With this motion, Defendant O'Shaughnessy provides the legal and factual basis for his request that the Court direct the government (1) to provide notice of its use of Executive

Order 12333 – whether for gathering intelligence or to obtain evidence for use in this criminal prosecution, and (2) to delineate the fruits of any such surveillance. This motion also requests that in order to ensure proper notice is given, the Court direct USAO to inquire, and investigating agencies to disclose, any use of EO12333 in investigating these defendants. As examined herein, this request is based important, emerging questions raised by a number of former Executive Branch officials and public organizations giving rise to concerns about the lawfulness of the Executive Branch’s use of EO12333 to seize and search communications and over subsequent use of that evidence – either directly or indirectly – in criminal cases. Such notice is proper under 18 U.S.C. §3504 and necessary to allow the defendants to enforce and protect their rights under the Fourth, Fifth, and Sixth Amendments.

II. Request For Notice Of Surveillance & Seizures

Defendants are entitled to know how the government monitored their communications and activities, and then to test—in an adversarial proceeding—whether the government’s evidence is derived from that surveillance. *United States v. U.S. District Court (Keith)*, 407 U.S. 297 (1972); *Alderman v. United States*, 394 U.S. 165 (1969). More specifically, upon a claim by defendants that either direct or derivative evidence was the subject of an unlawful seizure, the government must confirm or deny the existence of that purported unlawful seizure:

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

....

18 U.S.C. § 3504. Most cases regarding §3504 practice and procedure exist in the context of grand jury proceedings; however, case law suggests that in order to compel the government to respond to a § 3504 request for notice, the defendant must provide some evidence as to the basis for the claim that illegal seizures have taken place. *United States v. Alter*, 482 F.2d 1016, 1025-26 (9th Cir. 1973). Once the defendant's burden is met, the government must "affirm or deny" the existence of illegal electronic or other surveillance. *Id.* In accordance with defendants' initial burden to establish the likelihood of illegal seizures, Mr. O'Shaughnessy offers a Factual Basis, set forth in Section III, *infra*.

Before proceeding to the factual basis, however, defendants note that the government may attempt to avoid disclosure of such techniques through the process of "parallel construction." As recently described by Human Rights Watch, "parallel construction,' ... involves creating an alternative explanation for how the authorities discovered a certain fact (and thereby hiding the true origins of warrantless evidence from defendants and judges)". Human Rights Watch, *Dispatches: US Surveillance Court Opinion Shows Harm to Rights* (22 Apr. 2016) (describing government "use" of data seized under §702 FISA in the investigations of "any federal crime" but noting apparent policy of non-disclosure to criminal defendants).¹ See also Shiffman & Cooke, *Exclusive: U.S. directs agents to cover up program used to investigate Americans*, Reuters (8 Aug. 2013) ("federal agents are trained to 'recreate' the investigative trail to effectively cover up where the information originated....").² Similarly, the FBI appears to have an *internal*

¹Available at <https://www.hrw.org/print/289188> last visited 10 May 2016.

²Available at <http://www.reuters.com/article/us-dea-sod-idUSBRE97409R20130805> last visited 10 May 2016.

policy against disclosing surveillance techniques to prosecutors in order to avoid potential disclosure to the Court or criminal defense attorneys. B. Heath, *FBI warned agents not to share tech secrets with prosecutors*, USA TODAY (20 Apr. 2016).³ As quoted in the article, a former head of the FBI's Minneapolis Field Office said of the FBI non-disclosure policy: "The point is that there's usually no need for the case agents or the prosecutors to know how something was done." *Id.* Such a policy emphasizes the need for Court intervention to address the problem of parallel construction and to assure proper disclosures. Accordingly, Mr. O'Shaughnessy requests that the Court direct the USAO to inquire, and the FBI/other involved agencies to fully disclose, whether EO12333 was used directly or indirectly against these defendants.

III. Factual Basis For This Motion

Joseph O'Shaughnessy is no terrorist. However, government disclosures in this case establish that some elements of our government consider him and other individuals involved in the MNWR protest to be "domestic terrorists." EO12333 (described below) is a major tool used by the Executive Branch to investigate threats to national security. Accordingly, defendant moves for this request for notice and discovery.

In addition to the specific information in this case, public disclosures regarding the government's use of EO12333 to seize American citizens' communications and related rules that require sharing of that information with other agencies for use in criminal investigations further underlie this request for notice and discovery.

³<http://www.usatoday.com/story/news/2016/04/20/fbi-memos-surveillance-secrecy/83280968/> last visited 29 Apr. 2016.

A. Evidence That The Government Considers These Defendants “Domestic Terrorists”

1. The Bunkerville Incident, April 2014

In April of 2014, Cliven Bundy was in the thick of a dispute with the Bureau of Land Management (BLM) over the impounding of his cattle for unpaid grazing fees. Bundy supporters gathered in Bunkerville, Nevada to protest what they believed were unlawful actions by the BLM. Mr. O’Shaughnessy, who had never met Mr. Bundy, viewed online reports⁴ that purported to show BLM employees throwing a 57 year-old woman to the ground and releasing a police dog on a pregnant woman during the protests. After seeing the video, Mr. O’Shaughnessy went to Bunkerville over concerns about the BLM’s use of excessive force on protesters. He was present on April 14, 2016, during what has been referred to as “the standoff” between Bundy supporters and the BLM (hereafter “Bunkerville incident”).⁵

On April 18, 2014, Senator Harry Reid called Mr. Bundy’s supporters “domestic terrorists.”⁶ He repeated this claim in April of 2016 when he referred to the MNWR occupation as a “particular episode of domestic terrorism [that] has roots in Nevada.” Reid, *We Must Protect*

⁴See, e.g., <http://www.infowars.com/feds-assault-cancer-victim-pregnant-woman-in-clash-with-bundy-supporters/>, last visited 1 May 2016.

⁵Mr. O’Shaughnessy currently faces federal criminal charges in the District of Nevada in relation to the Bunkerville incident. D. Nev. Case 2:16-cr-00046.

⁶See Fox News, Megyn Kelly, 4/18/2014, available at <https://www.youtube.com/watch?v=NVJy3CBdZYY&nohtml5=False>, last visited 04/08/2016.

Nevada's Gold Butte, Lands Across America (April 7, 2016).⁷ These public statements provide proof that government officials such as Senator Harry Reid, Senate Democratic Leader and member of the Senate Select Committee on Intelligence, consider people associated with the MNWR protest “domestic terrorists.”

2. Discovery References To “Domestic Terrorism”

Review of the initial 24,500 pages of discovery reveals multiple law-enforcement references that suggest the citizens charged in this case have been labeled “domestic terrorists.” For example, 17 of the charged defendants have a note in their NCIC printouts from the Terrorist Screening Center (TSC) that each is “an individual identified as having possible ties with terrorism.” (*See* Bates starting pages MNWR_0004672, 4792, 4773, 4666, 4864, 4841, 4882, 4782, 4678, 4768, 4857, 4915, 4909, 4752, 4729, 4706, 4893.)⁸

Also in discovery is an application submitted under the All Writs Act in support of a “block and control service” for five phones used during the final days of the MNWR occupation. The application includes an allegation that the officer is submitting the request because he has probable cause that the users of the phones have committed a federal crime of terrorism, specifically citing 18 U.S.C. § 2332b(g)(5). (MNWR_0003454.)

⁷ Harry Reid press release, 4/06/2016, available at http://www.reid.senate.gov/press_releases/2016-04-07-reid-we-must-protect-nevadas-gold-butte-lands-across-america#.VxzeA-L2brc, last visited 04/24/2016.

⁸ Bates number references are provided to assist the government locating referenced discovery materials. The defendant does not expect the contents of these reports to be in dispute; therefore, the reports themselves have not been introduced as exhibits. Should the government claim the reports are not as described in this Memorandum, the defense will seek leave to supplement the record with the reports themselves.

With specific regard to Mr. O'Shaughnessy, discovery materials include his "NCIC Interstate Identification Index." (MNWR_0004825.) Included with this report, which documents Mr. O'Shaughnessy's criminal history as being limited to two prior misdemeanors, is a section marked "Caution Information" which reads: "Caution CONTACT TERRORIST SCREENING CENTER PHONE"

The FBI's Search Warrants executed at the MNWR in February 2016 and related property reports describe the matter as "Domestic Terrorism – Militia Extremism." (MNWR_0001914, 2866, 4039.) Similarly, the FBI file numbers on the 302 reports designate the investigation of the defendants as "266T", which refers to "Acts of Terrorism in the United States - Domestic Terrorists" and/or "100T" which refers to "Domestic Security."

The existence of these references in discovery establishes that the government has categorized the defendants as "domestic terrorists" and therefore, as analyzed below, the government may have directly used EO12333 to address "threats to national security" and may be withholding notice of such surveillance activities based on the flawed belief that if the government does not intend to use the fruits of the surveillance against the defendants, then the government need not disclose the surveillance. Even beyond these concerns specific to the case, however, broader concerns exist based on public disclosures regarding how the government is using EO12333 to gather information as to all Americans, and querying and sharing that information as relevant to ongoing criminal investigations.

B. Publicly Disclosed Information Giving Rise To Concerns Regarding The Federal Government's Pattern And Practice Of Seizing Americans' Communications

Public disclosures over the past few years have unveiled a wide array of tools used by the government in national security investigations, including Executive Order 12333.

1. Executive Order 12333

EO12333, first enacted in 1981 by President Reagan, delineates the various roles and powers of intelligence agencies, including the Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), the National Security Agency (NSA), and many others. EO12333 has been amended three times since its original enactment: in 2003, 2004, and 2008. *See* Exec. Order No. 12333, §§ 1.4, 2.1–2.5, 3 CFR 202, 210–212 (1981), reprinted as amended, note following 50 U.S.C. § 401, pp. 543, 547–548. A complete copy of EO12333 is provided as Exhibit A.

EO12333 Part I sets out the goals, directions, and duties of the various agencies, including a statement that special emphasis is to be placed in “detecting and countering” “[t]hreats to the [U.S.] and its interests from terrorism.” (EO12333, Part 1, §1.1(d)(2)). EO12333 Part II authorizes the intelligence agencies to create policies and procedures to accomplish the EO12333 objectives absent court involvement. EO12333 permits collection, retention, and dissemination of information concerning U.S. persons that is “incidentally obtained” if said information “may indicate involvement in activities that may violated Federal, state, local, or foreign laws.” EO12333, Part 2, §2.3(i).

In describing EO12333, a former State Department employee stated: “Americans should be even more concerned about the collection and storage of their communications under

Executive Order 12333 than under Section 215 [of the Foreign Intelligence Surveillance Act].”

John Napier Tye, *Meet Executive Order 12333: The Reagan rule that lets the NSA spy on Americans*, WASHINGTON POST (July 18, 2014) (Exhibit B).⁹ As further explained by Mr. Tye, Executive Order 12333:

authorizes collection of the content of communications, not just metadata, even for U.S. persons. Such persons cannot be individually targeted under 12333 without a court order. However, if the contents of a U.S. person’s communications are “incidentally” collected (an NSA term of art) in the course of a lawful overseas foreign intelligence investigation, then Section 2.3(c) of the executive order explicitly authorizes their retention. It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained.

Exhibit B at 2. In terms of “incidental collection,” Mr. Tye explained:

A legal regime in which U.S. citizens’ data receives different levels of privacy and oversight, depending on whether it is collected inside or outside U.S. borders, may have made sense when most communications by U.S. persons stayed inside the United States. But today, U.S. communications increasingly travel across U.S. borders — or are stored beyond them. For example, the Google and Yahoo e-mail systems rely on networks of “mirror” servers located throughout the world. An e-mail from New York to New Jersey is likely to wind up on servers in Brazil, Japan and Britain. The same is true for most purely domestic communications.

Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all such communications — content as well as metadata — provided that such collection occurs outside the United States in the course of a lawful foreign intelligence investigation. No warrant or court approval is required, and such collection never need be reported to Congress.

Exhibit B, *Meet Executive Order 12333*, at 3.

⁹For ease in reference, primary articles cited in this Memorandum are provided as exhibits.

It further appears that the government may have stored this information in a central database, available for subsequent querying by any law enforcement or intelligence agent with access. Aaron Mamiit, *Meet ICReach, the NSA Google-like surveillance search engine*, TECH TIMES (Aug. 26, 2014) (Exhibit C) (23 agencies, including FBI, access database with “records amounting to 850 billion of phone calls, cellphone locations, emails and internet chat messages”). As concluded by Mr. Tye: “I don’t believe that there is any valid interpretation of the Fourth Amendment that could permit the government to collect and store a large portion of U.S. citizens’ online communications, without any court or congressional oversight, and without any suspicion of wrongdoing.” Exhibit B at 5. Such collection and dissemination of private, personal information absent a warrant cannot possibly comport with the United States Constitution.

The NEW YORK TIMES recently reported that the Executive Branch is currently revising internal rules to allow law enforcement agencies direct access to seized data, rather than requiring the NSA to initially filter the raw data before it is shared with other agencies. Savage, *Obama Administration Set To Expand Sharing Of Data That NSA Intercepts* NEW YORK TIMES (25 Feb. 2016) (Exhibit D). *See also* Davis, *Coalition opposes allowing NSA to share surveillance data* (8 Apr. 2016) (describing petition to prevent changes to EO12333 that would further permit sharing of raw data) (Exhibit E; including referenced petition). These actions on the part of the Executive Branch provide further proof of the need for this Court’s independent consideration of the lawfulness of their investigative methods.

In March of 2016, the Brennan Center for Justice released a report entitled *Overseas Surveillance in an Interconnected World*¹⁰ that raised similar concerns over how the Executive Branch uses EO12333. The authors laid out several questions relevant to the government's investigation in Mr. O'Shaughnessy's case:

- ...Which agencies other than the collecting agency have access to EO 12333 data?
- ...Are there any criminal cases ... where the government has relied on evidence (a) directly obtained or (b) derived from EO 12333 surveillance?
- ...Under what circumstances, if at all, are criminal defendants and other parties to legal proceedings notified when information obtained or derived through EO 12333 activities is used against them?

Overseas Surveillance In An Interconnected World at 37. Mr. O'Shaughnessy shares these questions and concerns, and accordingly seeks the notice and discovery sought in this motion.

2. The Attorney General's Guidelines For Domestic FBI Operations Establish The Use Of EO12333-Seized Data In Criminal Investigations

"The Attorney General's Guidelines For Domestic FBI Operations" (dated 29 Sep. 2008) state that they "do not require that the FBI's information gathering activities be differentially labeled as 'criminal investigations,' 'national security investigations,' and 'foreign intelligence investigations'" because "all of the FBI's legal authorities are available for deployment in all cases to which they apply to protect the public from crimes and threats to the national security...." Exhibit F (FBI Guidelines) at 7. Thus, according to the FBI's own guidelines, information

¹⁰The Brennan Center for Justice report is available at https://www.brennancenter.org/sites/default/files/publications/Overseas_Surveillance_in_an_Interconnected_World.pdf, last visited 24 Apr. 2016.

seized as “intelligence” is available to agents investigating crime. Moreover, in describing the FBI’s authority to investigate “threats to national security,” the *Domestic Operations* manual invokes EO12333 as a source available to agents. Exhibit F at 7-8.

The analysis of EO12333 combined with the specific references in the FBI Guidelines document how the government is likely using “incidentally seized” communications by the defendants and perhaps surveilling the defendants directly as “national security threats.” As such, the defendants have established a record as to the likelihood that national security surveillance was used by the government in this case, as well as outlining important constitutional questions as to the lawfulness of the government’s searches and seizures of data and communications under EO12333. Based on this showing, the defendant hereby officially requests notice of surveillance conducted pursuant to EO12333.

IV. The *Keith* Case Squarely Controls The Question Of Whether Notice And Disclosure Of Intelligence-Related Seizures Is Required

In *Keith, supra*, the Supreme Court provided a comprehensive and eerily relevant outlining of tensions between national security “intelligence-gathering” investigations and Fourth Amendment guarantees. The defendants in *Keith* requested notice of electronic surveillance to determine whether the initial information seized tainted subsequent evidence the government intended to offer against the defendants at trial. 407 U.S. at 300. The government responded with an *ex parte* affidavit of the Attorney General disclosing government surveillance, but claiming any such surveillance was exempted from Fourth Amendment scrutiny because the surveillance related to the Executive Branch’s investigation of possible domestic threats to

national security. *Id.* at 300-01. After recognizing the immense responsibility of the Executive Branch to maintain the safety and stability of our nation, the Court explained:

National security cases, moreover, often reflect a convergence of First and Fourth Amendment values not present in cases of “ordinary” crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech. History abundantly documents the tendency of Government—however benevolent and benign its motives—to view with suspicion those who most fervently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs. The danger to political dissent is acute where the Government attempts to act under so vague a concept as the power to protect “domestic security.” Given the difficulty of defining the domestic security interest, the danger of abuse in acting to protect that interest becomes apparent. Senator Hart addressed this dilemma in the floor debate on s 2511(3):

“As I read it—and this is my fear—we are saying that the President, on his motion, could declare—name your favorite poison—draft dodgers, Black Muslims, the Ku Klux Klan, or civil rights activists to be a clear and present danger to the structure or existence of the Government.”

The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power. Nor must the fear of unauthorized official eavesdropping deter vigorous citizen dissent and discussion of Government action in private conversation. For private dissent, no less than open public discourse, is essential to our free society.

Id. at 313-14. In refusing to adopt an exception to the warrant requirement for surveillance “directed primarily to the collecting and maintaining of intelligence with respect to subversive forces, and ... not an attempt to gather evidence for specific criminal prosecutions”, the Court explained:

These Fourth Amendment freedoms [from searches and seizures absent a finding of probable cause by a neutral and detached magistrate] cannot properly be guaranteed if domestic security surveillances may be conducted solely within the

discretion of the Executive Branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate, and to prosecute. *Katz v. United States*, [389 U.S. 347, 515-16 (1967)](Douglas, J., concurring). But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech.

407 U.S. at 316-17. The Court concluded:

But we do not think a case has been made for the requested departure from Fourth Amendment standards. The circumstances described do not justify complete exemption of domestic security surveillance from prior judicial scrutiny. Official surveillance, whether its purpose be criminal investigation or ongoing intelligence gathering, risks infringement of constitutionally protected privacy of speech. Security surveillances are especially sensitive because of the inherent vagueness of the domestic security concept, the necessarily broad and continuing nature of intelligence gathering, and the temptation to utilize such surveillances to oversee political dissent. We recognize, as we have before, the constitutional basis of the President's domestic security role, but we think it must be exercised in a manner compatible with the Fourth Amendment. In this case we hold that this requires an appropriate prior warrant procedure.

Id. at 320. *See also United States v. Freitas*, 800 F.2d 1451, 1455-57 (9th Cir. 1986) (“surreptitious entry” warrant which allowed officers to enter and observe, but take nothing, subject to Fed. R. Crim. P. 41 notice requirement “because surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment.”).

If the government has a huge vat of communications, data, and metadata that it seized – directly or indirectly – from U.S. Citizens without their knowledge or consent and without a warrant, and *if* the government is querying that data to further its investigations – whether for use in mere intelligence, or to develop evidence for use in trial – then the defendants have a *per*

se right under *Keith* to know about those seizures and challenge the lawfulness of the government surveillance techniques. Moreover, considering the constitutionally suspect method of wholesale seizures of information for which U.S. citizens have a reasonable expectation of privacy, notice and disclosure is required under *Brady v. Maryland* because such practices are relevant to motions to suppress and therefore critical to the notion of due process and a fair trial. *See United States v. Gamez-Orduno*, 235 F.3d 453 (9th Cir. 2000) (“The suppression of material evidence helpful to the accused, whether at trial or on a motion to suppress, violates due process if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.”); *Smith v. Black*, 904 F.2d 950 (5th Cir. 1990) *vacated on other grounds* 503 U.S. 930 (1992) (due process mandates disclosure of information in the government’s possession if nondisclosure would “affect[] the outcome of [a] suppression hearing”).

V. Conclusion

Undersigned counsel concedes that under currently released documents, it is not clear whether the FBI considers itself able to engage in direct surveillance of the defendants as potential “terrorists” under EO12333. However, public disclosures establish that EO12333 has been used by the NSA to gather huge amounts of data as to all U.S. persons. Public disclosures further establish that EO12333 and the FBI Guidelines appear to allow for querying of data seized pursuant to intelligence operations and dissemination of that information to law enforcement agencies engaged in criminal investigations.

For each of the foregoing reasons, Mr. O'Shaughnessy respectfully requests that the Court direct the government to inquire as to all relevant law enforcement agencies whether they used EO12333 – either directly or indirectly – in their investigation of these defendants. Mr. O'Shaughnessy further requests the Court direct the government to provide notice of any such use of EO12333, as well as a delineation of the fruits of that surveillance. These disclosures are necessary to enforce Mr. O'Shaughnessy's exercise of his Fourth, Fifth and Sixth Amendment rights.

Respectfully submitted on May 11, 2016.

/s/ Amy Baggio
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503-222-9830
Attorney for Defendant O'Shaughnessy

Exhibit A

Executive Order 12333

United States Intelligence Activities

(As amended by Executive Orders 13284 (2003), 13355 (2004) and 13470 (2008))

PREAMBLE

Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence possible. For that purpose, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the National Security Act of 1947, as amended, (Act) and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

PART 1 Goals, Directions, Duties, and Responsibilities with Respect to United States Intelligence Efforts

1.1 *Goals.* The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) All means, consistent with applicable Federal law and this order, and with full consideration of the rights of United States persons, shall be used to obtain reliable intelligence information to protect the United States and its interests.

(b) The United States Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.

(c) Intelligence collection under this order should be guided by the need for information to respond to intelligence priorities set by the President.

(d) Special emphasis should be given to detecting and countering:

(1) Espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests;

(2) Threats to the United States and its interests from terrorism; and

(3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.

(e) Special emphasis shall be given to the production of timely, accurate, and insightful reports, responsive to decisionmakers in the executive branch, that draw on all appropriate sources of information, including open source information, meet rigorous analytic standards, consider diverse analytic viewpoints, and accurately represent appropriate alternative views.

(f) State, local, and tribal governments are critical partners in securing and defending the United States from terrorism and other threats to the United States and its interests. Our national intelligence effort should take into account the responsibilities and requirements of State, local, and tribal governments and, as appropriate, private sector entities, when undertaking the collection and dissemination of information and intelligence to protect the United States.

(g) All departments and agencies have a responsibility to prepare and to provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance.

1.2 The National Security Council.

(a) *Purpose.* The National Security Council (NSC) shall act as the highest ranking executive branch entity that provides support to the President for review of, guidance for, and direction to the conduct of all foreign intelligence,

counterintelligence, and covert action, and attendant policies and programs.

(b) *Covert Action and Other Sensitive Intelligence Operations.* The NSC shall consider and submit to the President a policy recommendation, including all dissents, on each proposed covert action and conduct a periodic review of ongoing covert action activities, including an evaluation of the effectiveness and consistency with current national policy of such activities and consistency with applicable legal requirements. The NSC shall perform such other functions related to covert action as the President may direct, but shall not undertake the conduct of covert actions. The NSC shall also review proposals for other sensitive intelligence operations.

1.3 *Director of National Intelligence.* Subject to the authority, direction, and control of the President, the Director of National Intelligence (Director) shall serve as the head of the Intelligence Community, act as the principal adviser to the President, to the NSC, and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the National Intelligence Program budget. The Director will lead a unified, coordinated, and effective intelligence effort. In addition, the Director shall, in carrying out the duties and responsibilities under this section, take into account the views of the heads of departments containing an element of the Intelligence Community and of the Director of the Central Intelligence Agency.

(a) Except as otherwise directed by the President or prohibited by law, the Director shall have access to all information and intelligence described in section 1.5(a) of this order. For the purpose of access to and sharing of information and intelligence, the Director:

(1) Is hereby assigned the function under section 3(5) of the Act, to determine that intelligence, regardless of the source from which derived and including information gathered within or outside the United States, pertains to more than one United States Government agency; and

(2) Shall develop guidelines for how information or intelligence is provided to or accessed by the Intelligence Community in accordance with section 1.5(a) of this order, and for how the information or intelligence may be used and shared by the Intelligence Community. All guidelines developed in accordance with this section shall be approved by the Attorney General and, where applicable, shall be consistent with guidelines issued pursuant to section 1016 of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108-458) (IRTPA).

(b) In addition to fulfilling the obligations and responsibilities prescribed by the Act, the Director:

(1) Shall establish objectives, priorities, and guidance for the Intelligence Community to ensure timely and effective collection, processing, analysis, and dissemination of intelligence, of whatever nature and from whatever source derived;

(2) May designate, in consultation with affected heads of departments or Intelligence Community elements, one or more Intelligence Community elements to develop and to maintain services of common concern on behalf of the Intelligence Community if the Director determines such services can be more efficiently or effectively accomplished in a consolidated manner;

(3) Shall oversee and provide advice to the President and the NSC with respect to all ongoing and proposed covert action programs;

(4) In regard to the establishment and conduct of intelligence arrangements and agreements with foreign governments and international organizations:

(A) May enter into intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations;

(B) Shall formulate policies concerning intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations; and

(C) Shall align and synchronize intelligence and counterintelligence foreign relationships among the elements of the Intelligence Community to further United States national security, policy, and intelligence objectives;

(5) Shall participate in the development of procedures approved by the Attorney General governing criminal drug intelligence activities abroad to ensure that these activities are consistent with foreign intelligence

programs;

(6) Shall establish common security and access standards for managing and handling intelligence systems, information, and products, with special emphasis on facilitating:

(A) The fullest and most prompt access to and dissemination of information and intelligence practicable, assigning the highest priority to detecting, preventing, preempting, and disrupting terrorist threats and activities against the United States, its interests, and allies; and

(B) The establishment of standards for an interoperable information sharing enterprise that facilitates the sharing of intelligence information among elements of the Intelligence Community;

(7) Shall ensure that appropriate departments and agencies have access to intelligence and receive the support needed to perform independent analysis;

(8) Shall protect, and ensure that programs are developed to protect, intelligence sources, methods, and activities from unauthorized disclosure;

(9) Shall, after consultation with the heads of affected departments and agencies, establish guidelines for Intelligence Community elements for:

(A) Classification and declassification of all intelligence and intelligence-related information classified under the authority of the Director or the authority of the head of a department or Intelligence Community element; and

(B) Access to and dissemination of all intelligence and intelligence-related information, both in its final form and in the form when initially gathered, to include intelligence originally classified by the head of a department or Intelligence Community element, except that access to and dissemination of information concerning United States persons shall be governed by procedures developed in accordance with Part 2 of this order;

(10) May, only with respect to Intelligence Community elements, and after consultation with the head of the originating Intelligence Community element or the head of the originating department, declassify, or direct the declassification of, information or intelligence relating to intelligence sources, methods, and activities. The Director may only delegate this authority to the Principal Deputy Director of National Intelligence;

(11) May establish, operate, and direct one or more national intelligence centers to address intelligence priorities;

(12) May establish Functional Managers and Mission Managers, and designate officers or employees of the United States to serve in these positions.

(A) Functional Managers shall report to the Director concerning the execution of their duties as Functional Managers, and may be charged with developing and implementing strategic guidance, policies, and procedures for activities related to a specific intelligence discipline or set of intelligence activities; set training and tradecraft standards; and ensure coordination within and across intelligence disciplines and Intelligence Community elements and with related non-intelligence activities. Functional Managers may also advise the Director on: the management of resources; policies and procedures; collection capabilities and gaps; processing and dissemination of intelligence; technical architectures; and other issues or activities determined by the Director.

(i) The Director of the National Security Agency is designated the Functional Manager for signals intelligence;

(ii) The Director of the Central Intelligence Agency is designated the Functional Manager for human intelligence; and

(iii) The Director of the National Geospatial-Intelligence Agency is designated the Functional Manager for geospatial intelligence.

(B) Mission Managers shall serve as principal substantive advisors on all or specified aspects of intelligence related to designated countries, regions, topics, or functional issues;

(13) Shall establish uniform criteria for the determination of relative priorities for the transmission of critical foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such communications;

(14) Shall have ultimate responsibility for production and dissemination of intelligence produced by the Intelligence Community and authority to levy analytic tasks on intelligence production organizations within the Intelligence Community, in consultation with the heads of the Intelligence Community elements concerned;

(15) May establish advisory groups for the purpose of obtaining advice from within the Intelligence Community to carry out the Director's responsibilities, to include Intelligence Community executive management committees composed of senior Intelligence Community leaders. Advisory groups shall consist of representatives from elements of the Intelligence Community, as designated by the Director, or other executive branch departments, agencies, and offices, as appropriate;

(16) Shall ensure the timely exploitation and dissemination of data gathered by national intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government elements, including military commands;

(17) Shall determine requirements and priorities for, and manage and direct the tasking, collection, analysis, production, and dissemination of, national intelligence by elements of the Intelligence Community, including approving requirements for collection and analysis and resolving conflicts in collection requirements and in the tasking of national collection assets of Intelligence Community elements (except when otherwise directed by the President or when the Secretary of Defense exercises collection tasking authority under plans and arrangements approved by the Secretary of Defense and the Director);

(18) May provide advisory tasking concerning collection and analysis of information or intelligence relevant to national intelligence or national security to departments, agencies, and establishments of the United States Government that are not elements of the Intelligence Community; and shall establish procedures, in consultation with affected heads of departments or agencies and subject to approval by the Attorney General, to implement this authority and to monitor or evaluate the responsiveness of United States Government departments, agencies, and other establishments;

(19) Shall fulfill the responsibilities in section 1.3(b)(17) and (18) of this order, consistent with applicable law and with full consideration of the rights of United States persons, whether information is to be collected inside or outside the United States;

(20) Shall ensure, through appropriate policies and procedures, the deconfliction, coordination, and integration of all intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program. In accordance with these policies and procedures:

(A) The Director of the Federal Bureau of Investigation shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities inside the United States;

(B) The Director of the Central Intelligence Agency shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities outside the United States;

(C) All policies and procedures for the coordination of counterintelligence activities and the clandestine collection of foreign intelligence inside the United States shall be subject to the approval of the Attorney General; and

(D) All policies and procedures developed under this section shall be coordinated with the heads of affected departments and Intelligence Community elements;

(21) Shall, with the concurrence of the heads of affected departments and agencies, establish joint procedures to deconflict, coordinate, and synchronize intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program, with intelligence activities, activities that involve foreign intelligence and security services, or activities that involve the use of clandestine methods, conducted by other United States Government departments, agencies, and establishments;

(22) Shall, in coordination with the heads of departments containing elements of the Intelligence Community, develop procedures to govern major system acquisitions funded in whole or in majority part by the National Intelligence Program;

(23) Shall seek advice from the Secretary of State to ensure that the foreign policy implications of proposed intelligence activities are considered, and shall ensure, through appropriate policies and procedures, that intelligence activities are conducted in a manner consistent with the responsibilities pursuant to law and presidential direction of Chiefs of United States Missions; and

(24) Shall facilitate the use of Intelligence Community products by the Congress in a secure manner.

(c) The Director's exercise of authorities in the Act and this order shall not abrogate the statutory or other responsibilities of the heads of departments of the United States Government or the Director of the Central Intelligence Agency. Directives issued and actions taken by the Director in the exercise of the Director's authorities and responsibilities to integrate, coordinate, and make the Intelligence Community more effective in providing intelligence related to national security shall be implemented by the elements of the Intelligence Community, provided that any department head whose department contains an element of the Intelligence Community and who believes that a directive or action of the Director violates the requirements of section 1018 of the IRTPA or this subsection shall bring the issue to the attention of the Director, the NSC, or the President for resolution in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments.

(d) Appointments to certain positions.

(1) The relevant department or bureau head shall provide recommendations and obtain the concurrence of the Director for the selection of: the Director of the National Security Agency, the Director of the National Reconnaissance Office, the Director of the National Geospatial-Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for Intelligence and Research, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury, and the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation. If the Director does not concur in the recommendation, the department head may not fill the vacancy or make the recommendation to the President, as the case may be. If the department head and the Director do not reach an agreement on the selection or recommendation, the Director and the department head concerned may advise the President directly of the Director's intention to withhold concurrence.

(2) The relevant department head shall consult with the Director before appointing an individual to fill a vacancy or recommending to the President an individual be nominated to fill a vacancy in any of the following positions: the Under Secretary of Defense for Intelligence; the Director of the Defense Intelligence Agency; uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps above the rank of Major General or Rear Admiral; the Assistant Commandant of the Coast Guard for Intelligence; and the Assistant Attorney General for National Security.

(e) Removal from certain positions.

(1) Except for the Director of the Central Intelligence Agency, whose removal the Director may recommend to the President, the Director and the relevant department head shall consult on the removal, or recommendation to the President for removal, as the case may be, of: the Director of the National Security Agency, the Director of the National Geospatial-Intelligence Agency, the Director of the Defense Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for Intelligence and Research, and the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury. If the Director and the department head do not agree on removal, or recommendation for removal, either may make a recommendation to the President for the removal of the individual.

(2) The Director and the relevant department or bureau head shall consult on the removal of: the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Director of the National Reconnaissance Office, the Assistant Commandant of the Coast Guard for Intelligence, and the Under Secretary of Defense for Intelligence. With respect to an individual appointed by a department head, the department head may remove the individual upon the request of the Director; if the department head

chooses not to remove the individual, either the Director or the department head may advise the President of the department head's intention to retain the individual. In the case of the Under Secretary of Defense for Intelligence, the Secretary of Defense may recommend to the President either the removal or the retention of the individual. For uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps, the Director may make a recommendation for removal to the Secretary of Defense.

(3) Nothing in this subsection shall be construed to limit or otherwise affect the authority of the President to nominate, appoint, assign, or terminate the appointment or assignment of any individual, with or without a consultation, recommendation, or concurrence.

1.4 *The Intelligence Community.* Consistent with applicable Federal law and with the other provisions of this order, and under the leadership of the Director, as specified in such law and this order, the Intelligence Community shall:

(a) Collect and provide information needed by the President and, in the performance of executive functions, the Vice President, the NSC, the Homeland Security Council, the Chairman of the Joint Chiefs of Staff, senior military commanders, and other executive branch officials and, as appropriate, the Congress of the United States;

(b) In accordance with priorities set by the President, collect information concerning, and conduct activities to protect against, international terrorism, proliferation of weapons of mass destruction, intelligence activities directed against the United States, international criminal drug activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(c) Analyze, produce, and disseminate intelligence;

(d) Conduct administrative, technical, and other support activities within the United States and abroad necessary for the performance of authorized activities, to include providing services of common concern for the Intelligence Community as designated by the Director in accordance with this order;

(e) Conduct research, development, and procurement of technical systems and devices relating to authorized functions and missions or the provision of services of common concern for the Intelligence Community;

(f) Protect the security of intelligence related activities, information, installations, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Intelligence Community elements as are necessary;

(g) Take into account State, local, and tribal governments' and, as appropriate, private sector entities' information needs relating to national and homeland security;

(h) Deconflict, coordinate, and integrate all intelligence activities and other information gathering in accordance with section 1.3(b)(20) of this order; and

(i) Perform such other functions and duties related to intelligence activities as the President may direct.

1.5 *Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.* The heads of all departments and agencies shall:

(a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;

(b) Provide all programmatic and budgetary information necessary to support the Director in developing the National Intelligence Program;

(c) Coordinate development and implementation of intelligence systems and architectures and, as appropriate, operational systems and architectures of their departments, agencies, and other elements with the Director to respond to national intelligence requirements and all applicable information sharing and security guidelines, information privacy, and other legal requirements;

(d) Provide, to the maximum extent permitted by law, subject to the availability of appropriations and not inconsistent with the mission of the department or agency, such further support to the Director as the Director may request, after consultation with the head of the department or agency, for the performance of the Director's functions;

- (e) Respond to advisory tasking from the Director under section 1.3(b)(18) of this order to the greatest extent possible, in accordance with applicable policies established by the head of the responding department or agency;
- (f) Ensure that all elements within the department or agency comply with the provisions of Part 2 of this order, regardless of Intelligence Community affiliation, when performing foreign intelligence and counterintelligence functions;
- (g) Deconflict, coordinate, and integrate all intelligence activities in accordance with section 1.3(b)(20), and intelligence and other activities in accordance with section 1.3(b)(21) of this order;
- (h) Inform the Attorney General, either directly or through the Federal Bureau of Investigation, and the Director of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the Federal Bureau of Investigation;
- (i) Pursuant to arrangements developed by the head of the department or agency and the Director of the Central Intelligence Agency and approved by the Director, inform the Director and the Director of the Central Intelligence Agency, either directly or through his designee serving outside the United States, as appropriate, of clandestine collection of foreign intelligence collected through human sources or through human-enabled means outside the United States that has not been coordinated with the Central Intelligence Agency; and
- (j) Inform the Secretary of Defense, either directly or through his designee, as appropriate, of clandestine collection of foreign intelligence outside the United States in a region of combat or contingency military operations designated by the Secretary of Defense, for purposes of this paragraph, after consultation with the Director of National Intelligence.

1.6 *Heads of Elements of the Intelligence Community.* The heads of elements of the Intelligence Community shall:

- (a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;
- (b) Report to the Attorney General possible violations of Federal criminal laws by employees and of specified Federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department, agency, or establishment concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;
- (c) Report to the Intelligence Oversight Board, consistent with Executive Order 13462 of February 29, 2008, and provide copies of all such reports to the Director, concerning any intelligence activities of their elements that they have reason to believe may be unlawful or contrary to executive order or presidential directive;
- (d) Protect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the Director;
- (e) Facilitate, as appropriate, the sharing of information or intelligence, as directed by law or the President, to State, local, tribal, and private sector entities;
- (f) Disseminate information or intelligence to foreign governments and international organizations under intelligence or counterintelligence arrangements or agreements established in accordance with section 1.3(b)(4) of this order;
- (g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if they have intelligence responsibilities for foreign or domestic criminal drug production and trafficking; and
- (h) Ensure that the inspectors general, general counsels, and agency officials responsible for privacy or civil liberties protection for their respective organizations have access to any information or intelligence necessary to perform their official duties.

1.7 *Intelligence Community Elements.* Each element of the Intelligence Community shall have the duties and responsibilities specified below, in addition to those specified by law or elsewhere in this order. Intelligence Community elements within executive departments shall serve the information and intelligence needs of their respective heads of departments and also shall operate as part of an integrated Intelligence Community, as provided in law or this order.

(a) THE CENTRAL INTELLIGENCE AGENCY. The Director of the Central Intelligence Agency shall:

- (1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence;
- (2) Conduct counterintelligence activities without assuming or performing any internal security functions within the United States;
- (3) Conduct administrative and technical support activities within and outside the United States as necessary for cover and proprietary arrangements;
- (4) Conduct covert action activities approved by the President. No agency except the Central Intelligence Agency (or the Armed Forces of the United States in time of war declared by the Congress or during any period covered by a report from the President to the Congress consistent with the War Powers Resolution, Public Law 93-148) may conduct any covert action activity unless the President determines that another agency is more likely to achieve a particular objective;
- (5) Conduct foreign intelligence liaison relationships with intelligence or security services of foreign governments or international organizations consistent with section 1.3(b)(4) of this order;
- (6) Under the direction and guidance of the Director, and in accordance with section 1.3(b)(4) of this order, coordinate the implementation of intelligence and counterintelligence relationships between elements of the Intelligence Community and the intelligence or security services of foreign governments or international organizations; and
- (7) Perform such other functions and duties related to intelligence as the Director may direct.

(b) THE DEFENSE INTELLIGENCE AGENCY. The Director of the Defense Intelligence Agency shall:

- (1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions;
- (2) Collect, analyze, produce, or, through tasking and coordination, provide defense and defense-related intelligence for the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, combatant commanders, other Defense components, and non-Defense agencies;
- (3) Conduct counterintelligence activities;
- (4) Conduct administrative and technical support activities within and outside the United States as necessary for cover and proprietary arrangements;
- (5) Conduct foreign defense intelligence liaison relationships and defense intelligence exchange programs with foreign defense establishments, intelligence or security services of foreign governments, and international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(l) of this order;
- (6) Manage and coordinate all matters related to the Defense Attaché system; and
- (7) Provide foreign intelligence and counterintelligence staff support as directed by the Secretary of Defense.

(c) THE NATIONAL SECURITY AGENCY. The Director of the National Security Agency shall:

- (1) Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
- (2) Establish and operate an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense, after coordination with the Director;
- (3) Control signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;
- (4) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements;

(5) Provide signals intelligence support for national and departmental requirements and for the conduct of military operations;

(6) Act as the National Manager for National Security Systems as established in law and policy, and in this capacity be responsible to the Secretary of Defense and to the Director;

(7) Prescribe, consistent with section 102A(g) of the Act, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the National Security Agency, and exercise the necessary supervisory control to ensure compliance with the regulations; and

(8) Conduct foreign cryptologic liaison relationships in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(d) THE NATIONAL RECONNAISSANCE OFFICE. The Director of the National Reconnaissance Office shall:

(1) Be responsible for research and development, acquisition, launch, deployment, and operation of overhead systems and related data processing facilities to collect intelligence and information to support national and departmental missions and other United States Government needs; and

(2) Conduct foreign liaison relationships relating to the above missions, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(e) THE NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY. The Director of the National Geospatial-Intelligence Agency shall:

(1) Collect, process, analyze, produce, and disseminate geospatial intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;

(2) Provide geospatial intelligence support for national and departmental requirements and for the conduct of military operations;

(3) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements; and

(4) Conduct foreign geospatial intelligence liaison relationships, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(f) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE ARMY, NAVY, AIR FORCE, AND MARINE CORPS. The Commanders and heads of the intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps shall:

(1) Collect (including through clandestine means), produce, analyze, and disseminate defense and defense-related intelligence and counterintelligence to support departmental requirements, and, as appropriate, national requirements;

(2) Conduct counterintelligence activities;

(3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and

(4) Conduct military intelligence liaison relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(g) INTELLIGENCE ELEMENTS OF THE FEDERAL BUREAU OF INVESTIGATION. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the intelligence elements of the Federal Bureau of Investigation shall:

(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions, in accordance with procedural guidelines approved by the Attorney General, after consultation with the Director;

(2) Conduct counterintelligence activities; and

(3) Conduct foreign intelligence and counterintelligence liaison relationships with intelligence, security, and law enforcement services of foreign governments or international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.

(h) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE COAST GUARD. The Commandant of the Coast Guard shall:

- (1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence including defense and defense-related information and intelligence to support national and departmental missions;
- (2) Conduct counterintelligence activities;
- (3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and
- (4) Conduct foreign intelligence liaison relationships and intelligence exchange programs with foreign intelligence services, security services or international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and, when operating as part of the Department of Defense, 1.10(i) of this order.

(i) THE BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE; THE OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF THE TREASURY; THE OFFICE OF NATIONAL SECURITY INTELLIGENCE, DRUG ENFORCEMENT ADMINISTRATION; THE OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF HOMELAND SECURITY; AND THE OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE, DEPARTMENT OF ENERGY. The heads of the Bureau of Intelligence and Research, Department of State; the Office of Intelligence and Analysis, Department of the Treasury; the Office of National Security Intelligence, Drug Enforcement Administration; the Office of Intelligence and Analysis, Department of Homeland Security; and the Office of Intelligence and Counterintelligence, Department of Energy shall:

- (1) Collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support national and departmental missions; and
- (2) Conduct and participate in analytic or information exchanges with foreign partners and international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.

(j) THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. The Director shall collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support the missions of the Office of the Director of National Intelligence, including the National Counterterrorism Center, and to support other national missions.

1.8 *The Department of State.* In addition to the authorities exercised by the Bureau of Intelligence and Research under sections 1.4 and 1.7(i) of this order, the Secretary of State shall:

- (a) Collect (overtly or through publicly available sources) information relevant to United States foreign policy and national security concerns;
- (b) Disseminate, to the maximum extent possible, reports received from United States diplomatic and consular posts;
- (c) Transmit reporting requirements and advisory taskings of the Intelligence Community to the Chiefs of United States Missions abroad; and
- (d) Support Chiefs of United States Missions in discharging their responsibilities pursuant to law and presidential direction.

1.9 *The Department of the Treasury.* In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of the Treasury under sections 1.4 and 1.7(i) of this order the Secretary of the Treasury shall collect (overtly or through publicly available sources) foreign financial information and, in consultation with the Department of State, foreign economic information.

1.10 *The Department of Defense.* The Secretary of Defense shall:

- (a) Collect (including through clandestine means), analyze, produce, and disseminate information and intelligence and be responsive to collection tasking and advisory tasking by the Director;

- (b) Collect (including through clandestine means), analyze, produce, and disseminate defense and defense-related intelligence and counterintelligence, as required for execution of the Secretary's responsibilities;
- (c) Conduct programs and missions necessary to fulfill national, departmental, and tactical intelligence requirements;
- (d) Conduct counterintelligence activities in support of Department of Defense components and coordinate counterintelligence activities in accordance with section 1.3(b)(20) and (21) of this order;
- (e) Act, in coordination with the Director, as the executive agent of the United States Government for signals intelligence activities;
- (f) Provide for the timely transmission of critical intelligence, as defined by the Director, within the United States Government;
- (g) Carry out or contract for research, development, and procurement of technical systems and devices relating to authorized intelligence functions;
- (h) Protect the security of Department of Defense installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;
- (i) Establish and maintain defense intelligence relationships and defense intelligence exchange programs with selected cooperative foreign defense establishments, intelligence or security services of foreign governments, and international organizations, and ensure that such relationships and programs are in accordance with sections 1.3(b)(4), 1.3(b)(21) and 1.7(a)(6) of this order;
- (j) Conduct such administrative and technical support activities within and outside the United States as are necessary to provide for cover and proprietary arrangements, to perform the functions described in sections (a) through (i) above, and to support the Intelligence Community elements of the Department of Defense; and
- (k) Use the Intelligence Community elements within the Department of Defense identified in section 1.7(b) through (f) and, when the Coast Guard is operating as part of the Department of Defense,
- (h) above to carry out the Secretary of Defense's responsibilities assigned in this section or other departments, agencies, or offices within the Department of Defense, as appropriate, to conduct the intelligence missions and responsibilities assigned to the Secretary of Defense.

1.11 *The Department of Homeland Security.* In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of Homeland Security under sections 1.4 and 1.7(i) of this order, the Secretary of Homeland Security shall conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President or the Vice President of the United States, the Executive Office of the President, and, as authorized by the Secretary of Homeland Security or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against use of such surveillance equipment, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of Homeland Security and the Attorney General.

1.12 *The Department of Energy.* In addition to the authorities exercised by the Office of Intelligence and Counterintelligence of the Department of Energy under sections 1.4 and 1.7(i) of this order, the Secretary of Energy shall:

- (a) Provide expert scientific, technical, analytic, and research capabilities to other agencies within the Intelligence Community, as appropriate;
- (b) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and
- (c) Participate with the Department of State in overtly collecting information with respect to foreign energy matters.

1.13 *The Federal Bureau of Investigation.* In addition to the authorities exercised by the intelligence elements of the Federal Bureau of Investigation of the Department of Justice under sections 1.4 and 1.7(g) of this order and under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the Federal Bureau of Investigation shall provide technical assistance, within or outside the United States, to foreign intelligence and law enforcement services, consistent with section 1.3(b)(20) and (21) of this order, as may be necessary to support national or departmental missions.

PART 2 Conduct of Intelligence Activities

2.1 *Need.* Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to informed decisionmaking in the areas of national security, national defense, and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative, and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities, the spread of weapons of mass destruction, and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 *Collection of information.* Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director. Those procedures shall permit collection, retention, and dissemination of the following types of information:

- (a) Information that is publicly available or collected with the consent of the person concerned;
- (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the Federal Bureau of Investigation (FBI) or, when significant foreign intelligence is sought, by other authorized elements of the Intelligence Community, provided that no foreign intelligence collection by such elements may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;
- (c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international drug or international terrorism investigation;
- (d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations;
- (e) Information needed to protect foreign intelligence or counterintelligence sources, methods, and activities from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other elements of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for such employment or contracting;
- (f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;
- (g) Information arising out of a lawful personnel, physical, or communications security investigation;
- (h) Information acquired by overhead reconnaissance not directed at specific United States persons;
- (i) Incidentally obtained information that may indicate involvement in activities that may violate Federal, state, local, or foreign laws; and
- (j) Information necessary for administrative purposes.

In addition, elements of the Intelligence Community may disseminate information to each appropriate element within the Intelligence Community for purposes of allowing the recipient element to determine whether the information is relevant to its responsibilities and can be retained by it, except that information derived from signals intelligence may only be disseminated or made available to Intelligence Community elements in accordance with procedures established by the Director in coordination with the Secretary of Defense and approved by the Attorney General.

2.4 Collection Techniques. Elements of the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Elements of the Intelligence Community are not authorized to use such techniques as electronic surveillance, unconsented physical searches, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

- (a) The Central Intelligence Agency (CIA) to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;
- (b) Unconsented physical searches in the United States by elements of the Intelligence Community other than the FBI, except for:
 - (1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and
 - (2) Searches by CIA of personal property of non-United States persons lawfully in its possession;
- (c) Physical surveillance of a United States person in the United States by elements of the Intelligence Community other than the FBI, except for:
 - (1) Physical surveillance of present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for any such employment or contracting; and
 - (2) Physical surveillance of a military person employed by a non-intelligence element of a military service; and
- (d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. The authority delegated pursuant to this paragraph, including the authority to approve the use of electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978, as amended, shall be exercised in accordance with that Act.

2.6 Assistance to Law Enforcement and other Civil Authorities. Elements of the Intelligence Community are authorized to:

- (a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any element of the Intelligence Community;
- (b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the general counsel of the providing element or department; and

(d) Render any other assistance and cooperation to law enforcement or other civil authorities not precluded by applicable law.

2.7 Contracting. Elements of the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 Consistency With Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 Undisclosed Participation in Organizations Within the United States. No one acting on behalf of elements of the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any element of the Intelligence Community without disclosing such person's intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the Intelligence Community element head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 Human Experimentation. No element of the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in or conspire to engage in assassination.

2.12 Indirect Participation. No element of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

2.13 Limitation on Covert Action. No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

PART 3 General Provisions

3.1 Congressional Oversight. The duties and responsibilities of the Director and the heads of other departments, agencies, elements, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be implemented in accordance with applicable law, including title V of the Act. The requirements of applicable law, including title V of the Act, shall apply to all covert action activities as defined in this Order.

3.2 Implementation. The President, supported by the NSC, and the Director shall issue such appropriate directives, procedures, and guidance as are necessary to implement this order. Heads of elements within the Intelligence Community shall issue appropriate procedures and supplementary directives consistent with this order. No procedures to implement Part 2 of this order shall be issued without the Attorney General's approval, after consultation with the Director. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an element in the Intelligence Community (or the head of the department containing such element) other than the FBI. In instances where the element head or department head and the Attorney General are unable to reach agreements on other than constitutional or other legal grounds, the Attorney General, the head of department concerned, or the Director shall refer the matter to the NSC.

3.3 *Procedures.* The activities herein authorized that require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order 12333. New procedures, as required by Executive Order 12333, as further amended, shall be established as expeditiously as possible. All new procedures promulgated pursuant to Executive Order 12333, as amended, shall be made available to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

3.4 *References and Transition.* References to "Senior Officials of the Intelligence Community" or "SOICs" in executive orders or other Presidential guidance, shall be deemed references to the heads of elements in the Intelligence Community, unless the President otherwise directs; references in Intelligence Community or Intelligence Community element policies or guidance, shall be deemed to be references to the heads of elements of the Intelligence Community, unless the President or the Director otherwise directs.

3.5 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.

(b) *Covert action* means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include:

- (1) Activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;
- (2) Traditional diplomatic or military activities or routine support to such activities;
- (3) Traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or
- (4) Activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(c) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(d) *Employee* means a person employed by, assigned or detailed to, or acting for an element within the Intelligence Community.

(e) *Foreign intelligence* means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(f) *Intelligence* includes foreign intelligence and counterintelligence.

(g) *Intelligence activities* means all activities that elements of the Intelligence Community are authorized to conduct pursuant to this order.

(h) *Intelligence Community* and elements of the Intelligence Community refers to:

- (1) The Office of the Director of National Intelligence;
- (2) The Central Intelligence Agency;
- (3) The National Security Agency;
- (4) The Defense Intelligence Agency;
- (5) The National Geospatial-Intelligence Agency;
- (6) The National Reconnaissance Office;

- (7) The other offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (8) The intelligence and counterintelligence elements of the Army, the Navy, the Air Force, and the Marine Corps;
- (9) The intelligence elements of the Federal Bureau of Investigation;
- (10) The Office of National Security Intelligence of the Drug Enforcement Administration;
- (11) The Office of Intelligence and Counterintelligence of the Department of Energy;
- (12) The Bureau of Intelligence and Research of the Department of State;
- (13) The Office of Intelligence and Analysis of the Department of the Treasury;
- (14) The Office of Intelligence and Analysis of the Department of Homeland Security;
- (15) The intelligence and counterintelligence elements of the Coast Guard; and
- (16) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director and the head of the department or agency concerned, as an element of the Intelligence Community.

(i) *National Intelligence and Intelligence Related to National Security* means all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that pertains, as determined consistent with any guidance issued by the President, or that is determined for the purpose of access to information by the Director in accordance with section 1.3(a)(1) of this order, to pertain to more than one United States Government agency; and that involves threats to the United States, its people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on United States national or homeland security.

(j) *The National Intelligence Program* means all programs, projects, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the Director and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

(k) *United States person* means a United States citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.6 *Revocation.* Executive Orders 13354 and 13355 of August 27, 2004, are revoked; and paragraphs 1.3(b)(9) and (10) of Part 1 supersede provisions within Executive Order 12958, as amended, to the extent such provisions in Executive Order 12958, as amended, are inconsistent with this Order.

3.7 *General Provisions.*

- (a) Consistent with section 1.3(c) of this order, nothing in this order shall be construed to impair or otherwise affect:
 - (1) Authority granted by law to a department or agency, or the head thereof; or
 - (2) Functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

Exhibit B

The Washington Post

Opinions

Meet Executive Order 12333: The Reagan rule that lets the NSA spy on Americans

By John Napier Tye July 18, 2014

John Napier Tye served as section chief for Internet freedom in the State Department's Bureau of Democracy, Human Rights and Labor from January 2011 to April 2014. He is now a legal director of Avaaz, a global advocacy organization.

In March I received a call from the White House counsel's office regarding a speech I had prepared for my boss at the State Department. The speech was about the impact that the disclosure of National Security Agency surveillance practices would have on U.S. Internet freedom policies. The draft stated that "if U.S. citizens disagree with congressional and executive branch determinations about the proper scope of signals intelligence activities, they have the opportunity to change the policy through our democratic process."

But the White House counsel's office told me that no, that wasn't true. I was instructed to amend the line, making a general reference to "our laws and policies," rather than our intelligence practices. I did.

Even after all the reforms President Obama has announced, some intelligence practices remain so secret, even from members of Congress, that there is no opportunity for our democracy to change them.

Public debate about the bulk collection of U.S. citizens' data by the NSA has focused largely on Section 215 of the Patriot Act, through which the government obtains court orders to compel American telecommunications companies to turn over phone data. But Section 215 is a small part of the picture and does not include the

universe of collection and storage of communications by U.S. persons authorized under Executive Order 12333.

From 2011 until April of this year, I worked on global Internet freedom policy as a civil servant at the State Department. In that capacity, I was cleared to receive top-secret and “sensitive compartmented” information. Based in part on classified facts that I am prohibited by law from publishing, I believe that Americans should be even more concerned about the collection and storage of their communications under Executive Order 12333 than under Section 215.

Bulk data collection that occurs inside the United States contains built-in protections for U.S. persons, defined as U.S. citizens, permanent residents and companies. Such collection must be authorized by statute and is subject to oversight from Congress and the Foreign Intelligence Surveillance Court. The statutes set a high bar for collecting the content of communications by U.S. persons. For example, Section 215 permits the bulk collection only of U.S. telephone metadata — lists of incoming and outgoing phone numbers — but not audio of the calls.

Executive Order 12333 contains no such protections for U.S. persons if the collection occurs outside U.S. borders. Issued by President Ronald Reagan in 1981 to authorize foreign intelligence investigations, 12333 is not a statute and has never been subject to meaningful oversight from Congress or any court. Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Select Committee on Intelligence, has said that the committee has not been able to “sufficiently” oversee activities conducted under 12333.

Unlike Section 215, the executive order authorizes collection of the content of communications, not just metadata, even for U.S. persons. Such persons cannot be individually targeted under 12333 without a court order. However, if the contents of a U.S. person’s communications are “incidentally” collected (an NSA term of art) in the course of a lawful overseas foreign intelligence investigation, then Section 2.3(c) of the executive order explicitly authorizes their retention. It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained.

“Incidental” collection may sound insignificant, but it is a legal loophole that can be stretched very wide. Remember that the NSA is building a data center in Utah five times the size of the U.S. Capitol building, with its own power plant that will reportedly burn \$40 million a year in electricity.

“Incidental collection” might need its own power plant.

A legal regime in which U.S. citizens' data receives different levels of privacy and oversight, depending on whether it is collected inside or outside U.S. borders, may have made sense when most communications by U.S. persons stayed inside the United States. But today, U.S. communications increasingly travel across U.S. borders — or are stored beyond them. For example, the Google and Yahoo e-mail systems rely on networks of “mirror” servers located throughout the world. An e-mail from New York to New Jersey is likely to wind up on servers in Brazil, Japan and Britain. The same is true for most purely domestic communications.

Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all such communications — content as well as metadata — provided that such collection occurs outside the United States in the course of a lawful foreign intelligence investigation. No warrant or court approval is required, and such collection never need be reported to Congress. None of the reforms that Obama announced earlier this year will affect such collection.

Without any legal barriers to such collection, U.S. persons must increasingly rely on the affected companies to implement security measures to keep their communications private. The executive order does not require the NSA to notify or obtain consent of a company before collecting its users' data.

The attorney general, rather than a court, must approve “minimization procedures” for handling the data of U.S. persons that is collected under 12333, to protect their rights. I do not know the details of those procedures. But the director of national intelligence recently declassified a document (United States Signals Intelligence Directive 18) showing that U.S. agencies may retain such data for five years.

Before I left the State Department, I filed a complaint with the department's inspector general, arguing that the current system of collection and storage of communications by U.S. persons under Executive Order 12333 violates the Fourth Amendment, which prohibits unreasonable searches and seizures. I have also brought my complaint to the House and Senate intelligence committees and to the inspector general of the NSA.

I am not the first person with knowledge of classified activities to publicly voice concerns about the collection and retention of communications by U.S. persons under 12333. The president's own Review Group on Intelligence and Communication Technologies, in Recommendation 12 of its public report, addressed the matter. But the review group coded its references in a way that masked the true nature of the problem.

At first glance, Recommendation 12 appears to concern Section 702 of the FISA Amendments Act, which authorizes collection inside the United States against foreign targets outside the United States. Although the recommendation does not explicitly mention Executive Order 12333, it does refer to “any other authority.” A

member of the review group confirmed to me that this reference was written deliberately to include Executive Order 12333.

Recommendation 12 urges that all data of U.S. persons incidentally collected under such authorities be immediately purged unless it has foreign intelligence value or is necessary to prevent serious harm. The review group further recommended that a U.S. person's incidentally collected data never be used in criminal proceedings against that person, and that the government refrain from searching communications by U.S. persons unless it obtains a warrant or unless such searching is necessary to prevent serious harm.

The White House understood that Recommendation 12 was intended to apply to 12333. That understanding was conveyed to me verbally by several White House staffers, and was confirmed in an unclassified White House document that I saw during my federal employment and that is now in the possession of several congressional committees.

In that document, the White House stated that adoption of Recommendation 12 would require "significant changes" to current practice under Executive Order 12333 and indicated that it had no plans to make such changes.

All of this calls into question some recent administration statements. Gen. Keith Alexander, a former NSA director, has said publicly that for years the NSA maintained a U.S. person e-mail metadata program similar to the Section 215 telephone metadata program. And he has maintained that the e-mail program was terminated in 2011 because "we thought we could better protect civil liberties and privacy by doing away with it." Note, however, that Alexander never said that the NSA stopped collecting such data — merely that the agency was no longer using the Patriot Act to do so. I suggest that Americans dig deeper.

Consider the possibility that Section 215 collection does not represent the outer limits of collection on U.S. persons but rather is a mechanism to backfill that portion of U.S. person data that cannot be collected overseas under 12333.

Proposals for replacing Section 215 collection are currently being debated in Congress. We need a similar debate about Executive Order 12333. The order as used today threatens our democracy. There is no good reason that U.S. citizens should receive weaker privacy and oversight protections simply because their communications are collected outside, not inside, our borders.

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I have never made any unauthorized disclosures of classified information, nor would I ever do so. I fully support keeping secret the targets, sources and methods of U.S. intelligence as crucial elements of national security. I was never a disgruntled federal employee; I loved my job at the State Department. I left voluntarily and on good terms to take a job outside of government. A draft of this article was reviewed and cleared by the State Department and the NSA to ensure that it contained no classified material.

When I started at the State Department, I took an oath to protect the Constitution of the United States. I don't believe that there is any valid interpretation of the Fourth Amendment that could permit the government to collect and store a large portion of U.S. citizens' online communications, without any court or congressional oversight, and without any suspicion of wrongdoing. Such a legal regime risks abuse in the long run, regardless of whether one trusts the individuals in office at a particular moment.

I am coming forward because I think Americans deserve an honest answer to the simple question: What kind of data is the NSA collecting on millions, or hundreds of millions, of Americans?

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Exhibit C

5/10/2016

Meet ICReach, the NSA Google-like surveillance search engine : TECH : Tech Times

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NSA, ICREACH, surveillance, Edward Snowden

Meet ICReach, the NSA Google-like surveillance search engine

26 August 2014, 9:16 am EDT By Aaron Mamlit Tech Times

TECH SCIENCE HEALTH CULTURE REVIEWS FEATURES VIDEOS

ICREACH ARCHITECTURE

The diagram illustrates the ICReach architecture. On the left, various agencies and tools are shown: CIA, NSA, GCHQ, DSD, CSE, GCSB, and others. These are connected to a central 'Global IC Analytic Community' which contains 'ICReach 2.0'. The search engine is labeled 'Google-like search'. To the right, there are boxes for 'SECRET//NOFORN', 'BOOMERANG', and 'Content Preparation Environment'. The entire system is labeled 'SECRET//NOFORN'.

were acquired by *The Intercept* reveal a Google-like surveillance search engine created by the National Security Agency.

The NSA has been using the search engine, named the ICREACH, to secretly give information to almost two dozen agencies of the United States government. Included in the information are records amounting to 850 billion of phone calls, cellphone locations, emails and internet chat messages.

The classified documents represent the first real evidence of the agency's actions of carrying out surveillance activities over the years and making the acquired information available to domestic agencies on law enforcement. The documents list the Drug Enforcement Administration and the Federal Bureau of Investigation as important participants in the project, along with the Defense Intelligence Agency and the Central Intelligence Agency.

Included within the structure of ICREACH is information on private communication messages of both foreigners and Americans alike, even for people that have never received accusations for criminal activities.

Reports about the ICREACH were first revealed in materials provided by Edward Snowden to *The Intercept*.

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actions of carrying out surveillance activities over the years and making the acquired information available to domestic agencies on law enforcement. The documents list the Drug Enforcement Administration and the Federal Bureau of Investigation as important participants in the project, along with the Defense Intelligence Agency and the Central Intelligence Agency.

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provided by Edward Snowden to *The Intercept*.

The earlier reports from the documents sent by Snowden revealed the existence of several NSA programs with the purpose of collecting massive amounts of communications. While the NSA had previously admitted of its sharing of certain information with local agencies such as the FBI, the process of sharing the information remained secret until now.

5/10/2016

Meet ICReach, the NSA Google-like surveillance search engine : TECH : Tech Times

ICREACH, according to a memo from 2010, has been made accessible to over 1,000 analysts employed over 23 United States government agencies which carry out intelligence work.

Through the ICREACH, agencies can track the movements of their targets and reveal their networks of contacts, which aid the agencies in predicting the future movements of the targets. Religious affiliations and political beliefs may also be revealed through the network.

Data found on ICREACH, however, seem to be mainly collected from the surveillance of the communications of foreigners.

Legal consultants told to The Intercept that the extent of ICREACH is alarming, and also expressed concern that law enforcers may use the information for domestic cases which are not connected to terrorism.

"To me, this is extremely troublesome," said Elizabeth Goitein, the co-director of the Liberty and National Security Program at the New York University School of Law's Brennan Center for Justice. "The myth that metadata is just a bunch of numbers and is not as revealing as actual communications content was exploded long ago - this is incredibly sensitive information."

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Exhibit D

The New York Times <http://nyti.ms/1QAT7vP>

POLITICS

Obama Administration Set to Expand Sharing of Data That N.S.A. Intercepts

By CHARLIE SAVAGE FEB. 25, 2016

WASHINGTON — The Obama administration is on the verge of permitting the National Security Agency to share more of the private communications it intercepts with other American intelligence agencies without first applying any privacy protections to them, according to officials familiar with the deliberations.

The change would relax longstanding restrictions on access to the contents of the phone calls and email the security agency vacuums up around the world, including bulk collection of satellite transmissions, communications between foreigners as they cross network switches in the United States, and messages acquired overseas or provided by allies.

The idea is to let more experts across American intelligence gain direct access to unprocessed information, increasing the chances that they will recognize any possible nuggets of value. That also means more officials will be looking at private messages — not only foreigners' phone calls and emails that have not yet had irrelevant personal information screened out, but also communications to, from, or about Americans that the N.S.A.'s foreign intelligence programs swept in incidentally.

Civil liberties advocates criticized the change, arguing that it will weaken privacy protections. They said the government should disclose how much American content the N.S.A. collects incidentally — which agency officials have said is hard to measure — and let the public debate what the rules should be for handling that information.

"Before we allow them to spread that information further in the government, we need to have a serious conversation about how to protect Americans' information," said Alexander Abdo, an American Civil Liberties Union lawyer.

Robert S. Litt, the general counsel in the office of the Director of National Intelligence, said that the administration had developed and was fine-tuning what is now a 21-page draft set of procedures to permit the sharing.

The goal for the final rules, Brian P. Hale, a spokesman for the office, said in a statement, is "to ensure that they protect privacy, civil liberties and constitutional rights while enabling the sharing of information that is important to protect national security."

Until now, National Security Agency analysts have filtered the surveillance information for the rest of the government. They search and evaluate the information and pass only the portions of phone calls or email that they decide is pertinent on to colleagues at the Central Intelligence Agency, the Federal Bureau of Investigation and other agencies. And before doing so, the N.S.A. takes steps to mask the names and any irrelevant information about innocent Americans.

The new system would permit analysts at other intelligence agencies to obtain direct access to raw information from the N.S.A.'s surveillance to evaluate for themselves. If they pull out phone calls or email to use for their own agency's work, they would apply the privacy protections masking innocent Americans' information — a process known as "minimization" — at that stage, Mr. Litt said.

Executive branch officials have been developing the new framework and system for years. President George W. Bush set the change in motion through a little-noticed line in a 2008 executive order, and the Obama administration has been quietly developing a framework for how to carry it out since taking office in 2009.

The executive branch can change its own rules without going to Congress or a judge for permission because the data comes from surveillance methods that lawmakers did not include in the main law that governs national security wiretapping, the Foreign Intelligence Surveillance Act, or FISA.

FISA covers a narrow band of surveillance: the collection of domestic or international communications from a wire on American soil, leaving most of what the N.S.A. does uncovered. In the absence of statutory regulation, the agency's other surveillance programs are governed by rules the White House sets under a Reagan-era directive called Executive Order 12333.

Mr. Litt declined to make available a copy of the current draft of the proposed procedures.

"Once these procedures are final and approved, they will be made public to the extent consistent with national security," Mr. Hale said. "It would be premature to draw conclusions about what the procedures will provide or authorize until they are finalized."

Among the things they would not address is what the draft rules say about searching the raw data using names or keywords intended to bring up Americans' phone calls or email that the security agency gathered "incidentally" under the 12333 surveillance programs — including whether F.B.I. agents may do so when working on ordinary criminal investigations.

Under current rules for data gathered under a parallel program — the no-warrant surveillance program governed by the FISA Amendments Act — N.S.A. and C.I.A. officials may search for Americans' information only if their purpose is to find foreign intelligence, but F.B.I. agents may conduct such a search for intelligence or law enforcement purposes. Some lawmakers have proposed requiring the government to obtain a warrant before conducting such a search.

In 2013, The Washington Post reported, based on documents leaked by the former intelligence contractor Edward J. Snowden, that the N.S.A. and its British counterpart, Government Communications Headquarters, had tapped into links connecting Google's and Yahoo's data centers overseas and that the American spy agency had collected millions of records a day from them. The companies have since taken steps to encrypt those links.

That collection occurred under 12333 rules, which had long prohibited the N.S.A. from sharing raw information gathered from the surveillance it governed with

other members of the intelligence community before minimization. The same rule had also long applied to sharing information gathered with FISA wiretaps.

But after the attacks of Sept. 11, 2001, the Bush administration began an effort to tear down barriers that impeded different parts of the government from working closely and sharing information, especially about terrorism.

In 2002, for example, it won permission, then secret, from the intelligence court permitting the C.I.A., the F.B.I. and the N.S.A. to share raw FISA wiretap information. The government did not disclose that change, which was first reported in a 2014 New York Times article based on documents disclosed by Mr. Snowden.

In August 2008, Mr. Bush changed 12333 to permit the N.S.A. to share unevaluated surveillance information with other intelligence agencies once procedures were developed.

Intelligence officials began working in 2009 on how the technical system and rules would work, Mr. Litt said, eventually consulting the Defense and Justice Departments. This month, the administration briefed the Privacy and Civil Liberties Oversight Board, an independent five-member watchdog panel, seeking input. Before they go into effect, they must be approved by James R. Clapper, the intelligence director; Loretta E. Lynch, the attorney general; and Ashton B. Carter, the defense secretary.

“We would like it to be completed sooner rather than later,” Mr. Litt said. “Our expectation is months rather than weeks or years.”

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A version of this article appears in print on February 26, 2016, on page A15 of the New York edition with the headline: U.S. Set to Expand Sharing of Intercepted Calls and Email.

Exhibit E



Jeremy Seth Davis, Senior Reporter

Follow @heyjsd

April 08, 2016

Coalition opposes allowing NSA to share surveillance data

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A coalition of privacy and civil liberties groups are working together to oppose proposed changes to an executive order that governs the overseas interception of phone, e-mail, and other communications during intelligence investigations. The reported proposed changes to Executive Order 12333 would relax the NSA's limitations in sharing with other agencies communications information the agency collected about individuals.

The groups sent a [petition](#) opposing the changes to Director of National Intelligence James Clapper and Director of the National Security Agency (NSA) Admiral Michael Rogers calling.

"Considering the extent and scope of the information collected under EO 12333, the policy changes under consideration could allow agencies like the FBI to circumvent constitutional protections and will pose new threats to the privacy and civil liberties of ordinary Americans," the letter stated.

Last month, the NSA's privacy director Rebecca Richards said the NSA can "incidentally" collect Americans' data if their Internet activities extend into international borders. The comment occurred at a [panel discussion](#) following a report on Executive Order 12333 published by the Brennan Center.

During the panel discussion, American Civil Liberties Union legislative counsel Neema Singh Guliani said Executive Order 12333 "appears to be more permissive" of intelligence agencies' use of personal data. She said, "It's not clear that criminal defendants get notice, or even that there are any procedures to ensure that sufficient notice is provided."



Privacy groups oppose proposed changes to an executive order that would relax limitations on the NSA in sharing surveilled communications information with other agencies.

The petition said the reported changes to the executive order “would fatally weaken existing restrictions on access to the phone calls, emails, and other data the NSA collects.”

Several think tanks, advocacy groups, and other associations signed the petition, including the American Civil Liberties Union, American Library Association, Brennan Center for Justice, Electronic Frontier Foundation, Fight for the Future, Government Accountability Project, National Association of Criminal Defense Lawyers, New America's Open Technology Institute, OpenTheGovernment.org, Project On Government Oversight, R Street, Sunlight Foundation, TechFreedom, and X-Lab.

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April 7, 2016

Hon. James R. Clapper
Director, Office of the Director of National Intelligence
Washington, DC 20511

Admiral Michael S. Rogers
Director, National Security Agency
Fort Meade, MD 20755

Re: Changes to Executive Order 12333 Minimization Procedures

Dear Director Clapper and Admiral Rogers:

The undersigned organizations write to request that you halt the proposed changes to Executive Order 12333 policies that would share raw data collected by the National Security Agency with law enforcement agencies. As you know, EO 12333 sets forth a framework for the collection of foreign intelligence information overseas, but sweeps in massive amounts of Americans' data as well, including private messages, address books, and Internet metadata.¹ Considering the extent and scope of the information collected under EO 12333, the policy changes under consideration could allow agencies like the FBI to circumvent constitutional protections and will pose new threats to the privacy and civil liberties of ordinary Americans. At a minimum, when the administration seeks to ratchet back privacy protections for Americans, Congress and the American public should have the opportunity to weigh in.

The *New York Times* reported that the White House and the Director of National Intelligence are in the process of establishing procedures to expand intra-governmental access to raw data gathered by the NSA, including communications to, from, and about U.S. persons.² As a threshold matter, we were dismayed to learn about this development in the press instead of directly from your offices. News reports indicate the NSA has been developing these new procedures "for years"—since at least the start of the administration. The secrecy of this major undertaking undercuts Intelligence Community claims of increased transparency and engagement with civil society and the public and is inconsistent with the "Principles of Intelligence Transparency" adopted by ODNI in January of this year and reaffirmed through an implementation plan issued by ODNI in February.³

¹ Ellen Nakashima and Ashkan Soltani, "Privacy watchdog's next target: the least-known but biggest aspect of NSA surveillance," *Washington Post* (July 24, 2014), available at <http://wapo.st/1SmuqEx>.

² Charlie Savage, "Obama Administration Set to Expand Sharing of Data That N.S.A. Intercepts," *N.Y. Times* (Feb. 25, 2016), available at <http://nyti.ms/21vgS0f>; See also Amos Toh, Faiza Patel, and Elizabeth Goitein, "Overseas Surveillance in an Interconnected World," Brennan Center report, Part IV.B, available at <http://bit.ly/1UfSdMW>.

³ Principle 2 states the IC will "[b]e proactive and clear in making information publicly available through authorized channels, including taking affirmative steps to...provide timely transparency on matters of public interest," and "engage with stakeholders to better explain information and to understand diverse perspectives..."

Moreover, the reported changes would fatally weaken existing restrictions on access to the phone calls, emails, and other data the NSA collects. Currently, under United States Signals Intelligence Directive 18 (USSID18), access to raw data containing U.S. persons' identities is limited.⁴ Intelligence reports disseminated to other agencies may include U.S. persons' identities only if the U.S. person has consented, the information is publicly available, or the identity of the U.S. person is necessary to understand the foreign intelligence information or assess its importance.⁵ The reported changes would jettison these longstanding restrictions and allow multiple other government agencies access to the NSA's raw take.

This change is particularly troubling because EO 12333 data collection is far broader than the controversial surveillance programs carried out under the auspices of other legal authorities, such as Section 702 of the Foreign Intelligence Surveillance Act (FISA). Data obtained under EO 12333 may be gathered through mass, even indiscriminate, surveillance. Given that even wholly domestic communications today may be routed or stored overseas, such broad surveillance inevitably captures the data of millions of Americans.⁶ Sharing such information with U.S. law enforcement agencies would allow them to circumvent the strict, constitutionally mandated rules of evidence gathering that govern ordinary criminal investigations. The ongoing but largely obscured practice of parallel construction, whereby information gathered for national security purposes is laundered through domestic law enforcement while concealing its origins and manufacturing a new discovery history, undermines the important role that Courts play in policing the bounds of our Constitution and could become a more common occurrence under these new procedures.⁷

The secret shift in policy is particularly troubling at a time when Congress and government oversight bodies are calling for the NSA to move in the other direction—to provide more information to the general public about the legal authorities governing U.S. surveillance programs and to enact greater privacy protections for U.S. persons affected by these programs. Last year, Congress enacted the USA Freedom Act to prohibit the U.S. government's mass collection of Americans' phone records. Surely Congress did not intend for the government to evade this prohibition through new NSA procedures giving law enforcement agencies easy access to Americans' phone metadata swept in under EO 12333.

Similarly, the independent group of experts appointed by President Obama to review surveillance practices in 2013 recommended significantly *tightening* the limits on the retention and use of information about U.S. persons collected under Section 702 of FISA "or under any other authority that justifies the interception of a communication on the ground that it is directed at a non-United States

⁴ USSID18 § 6.2.

⁵ USSID18 § 7.2.

⁶ See Toh, Patel, and Goitein, Brennan Center report, Part I.C, <http://bit.ly/1UfSdMW>.

⁷ See Request to the United States Commission on Civil Rights to investigate disproportionate impacts of "Parallel Construction" on communities of color, prepared by Sean Vitka, X-Lab, <http://bit.ly/1ZKEddd>.

person who is located outside the United States.”⁸ In addition, recognizing the implications of EO 12333 surveillance, the congressionally created Privacy and Civil Liberties Oversight Board is currently examining several EO 12333 programs.

Congress has taken notice of the NSA’s planned changes. Members of the House Oversight and Government Reform Committee recently wrote a letter to NSA Director Admiral Rogers asking for the NSA to confirm whether the Agency intends to routinely provide intelligence information—collected without a warrant—to domestic law enforcement agencies. If the NSA intends to go down this uncharted path, the letter states, “we request that you stop.” The letter further emphasizes that the proposed shift in the relationship between our intelligence agencies and the American people should not be done in secret.⁹

We join Representatives Lieu and Farenthold in requesting that you halt efforts to modify EO 12333 information sharing procedures and any other related efforts that would expand the sharing of raw information gathered by NSA with agencies that have law enforcement functions. We also ask that you release the 21-page draft policy referenced in the *New York Times* article to enable the American public to weigh in on a planned policy change that would directly affect their rights and interests.

We would appreciate and request the opportunity to discuss this matter in greater detail. To reply to this letter, or to arrange a call or meeting, please contact any of the following representatives of our coalition:

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Civil Liberties Legislative Lead
Electronic Frontier Foundation
Jaycox@eff.org
415-436-9333

Patrice McDermott, Executive Director
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Elizabeth Goitein, Co-Director
Liberty & National Security Program
Brennan Center for Justice
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202.249.7192

Thank you for your prompt response.

Sincerely,

⁸ Recommendation 12, Review Group on Intelligence and Communications Technologies.

⁹ Letter to Admiral Michael S. Rogers, Director, National Security Agency, from Representatives Ted W. Lieu and Blake Farenthold, March 23, 2016: <http://bit.ly/25whJke>.

Advocacy for Principled Action in Government
American Civil Liberties Union
American-Arab Anti-Discrimination Committee
Arab American Institute
American Library Association
Bill of Rights Defense Committee
Brennan Center for Justice
Campaign for Liberty
Constitutional Alliance
Defending Dissent Foundation
Demand Progress
Electronic Privacy Information Center (EPIC)
Electronic Frontier Foundation
Free Speech Coalition
Fight for the Future
Government Accountability Project
The Niskanen Center

Media Freedom Foundation
National Security Counselors
National Association of Criminal Defense
Lawyers
Liberty Coalition
New America's Open Technology Institute
OpenTheGovernment.org
Project Censored
Project On Government Oversight
Public Citizen
Restore The Fourth
RootsAction.org
R Street
Sunlight Foundation
TechFreedom
X-Lab

cc: Members of the United States Senate Committee on the Judiciary
Members of the United States House of Representatives Committee on the Judiciary

Exhibit F

**THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC
FBI OPERATIONS**

PREAMBLE

These Guidelines are issued under the authority of the Attorney General as provided in sections 509, 510, 533, and 534 of title 28, United States Code, and Executive Order 12333. They apply to domestic investigative activities of the Federal Bureau of Investigation (FBI) and other activities as provided herein.

TABLE OF CONTENTS

INTRODUCTION	5
A. FBI RESPONSIBILITIES – FEDERAL CRIMES, THREATS TO THE NATIONAL SECURITY, FOREIGN INTELLIGENCE	6
B. THE FBI AS AN INTELLIGENCE AGENCY	9
C. OVERSIGHT	10
I. <u>GENERAL AUTHORITIES AND PRINCIPLES</u>	12
A. SCOPE	12
B. GENERAL AUTHORITIES	12
C. USE OF AUTHORITIES AND METHODS	12
D. NATURE AND APPLICATION OF THE GUIDELINES	14
II. <u>INVESTIGATIONS AND INTELLIGENCE GATHERING</u>	16
A. ASSESSMENTS	19
B. PREDICATED INVESTIGATIONS	20
C. ENTERPRISE INVESTIGATIONS	23
III. <u>ASSISTANCE TO OTHER AGENCIES</u>	25
A. THE INTELLIGENCE COMMUNITY	25
B. FEDERAL AGENCIES GENERALLY	25
C. STATE, LOCAL, OR TRIBAL AGENCIES	27
D. FOREIGN AGENCIES	27
E. APPLICABLE STANDARDS AND PROCEDURES	28
IV. <u>INTELLIGENCE ANALYSIS AND PLANNING</u>	29
A. STRATEGIC INTELLIGENCE ANALYSIS	29
B. REPORTS AND ASSESSMENTS GENERALLY	29
C. INTELLIGENCE SYSTEMS	29
V. <u>AUTHORIZED METHODS</u>	31
A. PARTICULAR METHODS	31
B. SPECIAL REQUIREMENTS	32
C. OTHERWISE ILLEGAL ACTIVITY	33
VI. <u>RETENTION AND SHARING OF INFORMATION</u>	35
A. RETENTION OF INFORMATION	35
B. INFORMATION SHARING GENERALLY	35
C. INFORMATION RELATING TO CRIMINAL MATTERS	36
D. INFORMATION RELATING TO NATIONAL SECURITY AND FOREIGN INTELLIGENCE MATTERS	37

VII. <u>DEFINITIONS</u>	42
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INTRODUCTION

As the primary investigative agency of the federal government, the Federal Bureau of Investigation (FBI) has the authority and responsibility to investigate all violations of federal law that are not exclusively assigned to another federal agency. The FBI is further vested by law and by Presidential directives with the primary role in carrying out investigations within the United States of threats to the national security. This includes the lead domestic role in investigating international terrorist threats to the United States, and in conducting counterintelligence activities to meet foreign entities' espionage and intelligence efforts directed against the United States. The FBI is also vested with important functions in collecting foreign intelligence as a member agency of the U.S. Intelligence Community. The FBI accordingly plays crucial roles in the enforcement of federal law and the proper administration of justice in the United States, in the protection of the national security, and in obtaining information needed by the United States for the conduct of its foreign affairs. These roles reflect the wide range of the FBI's current responsibilities and obligations, which require the FBI to be both an agency that effectively detects, investigates, and prevents crimes, and an agency that effectively protects the national security and collects intelligence.

The general objective of these Guidelines is the full utilization of all authorities and investigative methods, consistent with the Constitution and laws of the United States, to protect the United States and its people from terrorism and other threats to the national security, to protect the United States and its people from victimization by all crimes in violation of federal law, and to further the foreign intelligence objectives of the United States. At the same time, it is axiomatic that the FBI must conduct its investigations and other activities in a lawful and reasonable manner that respects liberty and privacy and avoids unnecessary intrusions into the lives of law-abiding people. The purpose of these Guidelines, therefore, is to establish consistent policy in such matters. They will enable the FBI to perform its duties with effectiveness, certainty, and confidence, and will provide the American people with a firm assurance that the FBI is acting properly under the law.

The issuance of these Guidelines represents the culmination of the historical evolution of the FBI and the policies governing its domestic operations subsequent to the September 11, 2001, terrorist attacks on the United States. Reflecting decisions and directives of the President and the Attorney General, inquiries and enactments of Congress, and the conclusions of national commissions, it was recognized that the FBI's functions needed to be expanded and better integrated to meet contemporary realities:

[C]ontinuing coordination . . . is necessary to optimize the FBI's performance in both national security and criminal investigations [The] new reality requires first that the FBI and other agencies do a better job of gathering intelligence inside the United States, and second that we eliminate the remnants of the old "wall" between foreign intelligence and domestic law enforcement. Both tasks must be accomplished without sacrificing our domestic liberties and the rule of law, and both depend on building a very

different FBI from the one we had on September 10, 2001. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 466, 452 (2005).)

In line with these objectives, the FBI has reorganized and reoriented its programs and missions, and the guidelines issued by the Attorney General for FBI operations have been extensively revised over the past several years. Nevertheless, the principal directives of the Attorney General governing the FBI's conduct of criminal investigations, national security investigations, and foreign intelligence collection have persisted as separate documents involving different standards and procedures for comparable activities. These Guidelines effect a more complete integration and harmonization of standards, thereby providing the FBI and other affected Justice Department components with clearer, more consistent, and more accessible guidance for their activities, and making available to the public in a single document the basic body of rules for the FBI's domestic operations.

These Guidelines also incorporate effective oversight measures involving many Department of Justice and FBI components, which have been adopted to ensure that all FBI activities are conducted in a manner consistent with law and policy.

The broad operational areas addressed by these Guidelines are the FBI's conduct of investigative and intelligence gathering activities, including cooperation and coordination with other components and agencies in such activities, and the intelligence analysis and planning functions of the FBI.

A. FBI RESPONSIBILITIES – FEDERAL CRIMES, THREATS TO THE NATIONAL SECURITY, FOREIGN INTELLIGENCE

Part II of these Guidelines authorizes the FBI to carry out investigations to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence. The major subject areas of information gathering activities under these Guidelines – federal crimes, threats to the national security, and foreign intelligence – are not distinct, but rather overlap extensively. For example, an investigation relating to international terrorism will invariably crosscut these areas because international terrorism is included under these Guidelines' definition of "threat to the national security," because international terrorism subject to investigation within the United States usually involves criminal acts that violate federal law, and because information relating to international terrorism also falls within the definition of "foreign intelligence." Likewise, counterintelligence activities relating to espionage are likely to concern matters that constitute threats to the national security, that implicate violations or potential violations of federal espionage laws, and that involve information falling under the definition of "foreign intelligence."

While some distinctions in the requirements and procedures for investigations are necessary in different subject areas, the general design of these Guidelines is to take a uniform

approach wherever possible, thereby promoting certainty and consistency regarding the applicable standards and facilitating compliance with those standards. Hence, these Guidelines do not require that the FBI's information gathering activities be differentially labeled as "criminal investigations," "national security investigations," or "foreign intelligence collections," or that the categories of FBI personnel who carry out investigations be segregated from each other based on the subject areas in which they operate. Rather, all of the FBI's legal authorities are available for deployment in all cases to which they apply to protect the public from crimes and threats to the national security and to further the United States' foreign intelligence objectives. In many cases, a single investigation will be supportable as an exercise of a number of these authorities – i.e., as an investigation of a federal crime or crimes, as an investigation of a threat to the national security, and/or as a collection of foreign intelligence.

1. Federal Crimes

The FBI has the authority to investigate all federal crimes that are not exclusively assigned to other agencies. In most ordinary criminal investigations, the immediate objectives include such matters as: determining whether a federal crime has occurred or is occurring, or if planning or preparation for such a crime is taking place; identifying, locating, and apprehending the perpetrators; and obtaining the evidence needed for prosecution. Hence, close cooperation and coordination with federal prosecutors in the United States Attorneys' Offices and the Justice Department litigating divisions are essential both to ensure that agents have the investigative tools and legal advice at their disposal for which prosecutorial assistance or approval is needed, and to ensure that investigations are conducted in a manner that will lead to successful prosecution. Provisions in many parts of these Guidelines establish procedures and requirements for such coordination.

2. Threats to the National Security

The FBI's authority to investigate threats to the national security derives from the executive order concerning U.S. intelligence activities, from delegations of functions by the Attorney General, and from various statutory sources. See, e.g., E.O. 12333; 50 U.S.C. 401 et seq.; 50 U.S.C. 1801 et seq. These Guidelines (Part VII.S) specifically define threats to the national security to mean: international terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with Executive Order 12333 or any successor order.

Activities within the definition of "threat to the national security" that are subject to investigation under these Guidelines commonly involve violations (or potential violations) of federal criminal laws. Hence, investigations of such threats may constitute an exercise both of the FBI's criminal investigation authority and of the FBI's authority to investigate threats to the national security. As with criminal investigations generally, detecting and solving the crimes, and eventually arresting and prosecuting the perpetrators, are likely to be among the objectives of

investigations relating to threats to the national security. But these investigations also often serve important purposes outside the ambit of normal criminal investigation and prosecution, by providing the basis for, and informing decisions concerning, other measures needed to protect the national security. These measures may include, for example: excluding or removing persons involved in terrorism or espionage from the United States; recruitment of double agents; freezing assets of organizations that engage in or support terrorism; securing targets of terrorism or espionage; providing threat information and warnings to other federal, state, local, and private agencies and entities; diplomatic or military actions; and actions by other intelligence agencies to counter international terrorism or other national security threats.

In line with this broad range of purposes, investigations of threats to the national security present special needs to coordinate with other Justice Department components, including particularly the Justice Department's National Security Division, and to share information and cooperate with other agencies with national security responsibilities, including other agencies of the U.S. Intelligence Community, the Department of Homeland Security, and relevant White House (including National Security Council and Homeland Security Council) agencies and entities. Various provisions in these Guidelines establish procedures and requirements to facilitate such coordination.

3. Foreign Intelligence

As with the investigation of threats to the national security, the FBI's authority to collect foreign intelligence derives from a mixture of administrative and statutory sources. See, e.g., E.O. 12333; 50 U.S.C. 401 et seq.; 50 U.S.C. 1801 et seq.; 28 U.S.C. 532 note (incorporating P.L. 108-458 §§ 2001-2003). These Guidelines (Part VII.E) define foreign intelligence to mean "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists."

The FBI's foreign intelligence collection activities have been expanded by legislative and administrative reforms subsequent to the September 11, 2001, terrorist attacks, reflecting the FBI's role as the primary collector of foreign intelligence within the United States, and the recognized imperative that the United States' foreign intelligence collection activities become more flexible, more proactive, and more efficient in order to protect the homeland and adequately inform the United States' crucial decisions in its dealings with the rest of the world:

The collection of information is the foundation of everything that the Intelligence Community does. While successful collection cannot ensure a good analytical product, the failure to collect information . . . turns analysis into guesswork. And as our review demonstrates, the Intelligence Community's human and technical intelligence collection agencies have collected far too little information on many of the issues we care about most. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 351 (2005).)

These Guidelines accordingly provide standards and procedures for the FBI's foreign intelligence collection activities that meet current needs and realities and optimize the FBI's ability to discharge its foreign intelligence collection functions.

The authority to collect foreign intelligence extends the sphere of the FBI's information gathering activities beyond federal crimes and threats to the national security, and permits the FBI to seek information regarding a broader range of matters relating to foreign powers, organizations, or persons that may be of interest to the conduct of the United States' foreign affairs. The FBI's role is central to the effective collection of foreign intelligence within the United States because the authorized domestic activities of other intelligence agencies are more constrained than those of the FBI under applicable statutes and Executive Order 12333. In collecting foreign intelligence, the FBI will generally be guided by nationally-determined intelligence requirements, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives issued under the authority of the Director of National Intelligence (DNI). As provided in Part VII.F of these Guidelines, foreign intelligence requirements may also be established by the President or Intelligence Community officials designated by the President, and by the Attorney General, the Deputy Attorney General, or an official designated by the Attorney General.

The general guidance of the FBI's foreign intelligence collection activities by DNI-authorized requirements does not, however, limit the FBI's authority to conduct investigations supportable on the basis of its other authorities – to investigate federal crimes and threats to the national security – in areas in which the information sought also falls under the definition of foreign intelligence. The FBI conducts investigations of federal crimes and threats to the national security based on priorities and strategic objectives set by the Department of Justice and the FBI, independent of DNI-established foreign intelligence collection requirements.

Since the authority to collect foreign intelligence enables the FBI to obtain information pertinent to the United States' conduct of its foreign affairs, even if that information is not related to criminal activity or threats to the national security, the information so gathered may concern lawful activities. The FBI should accordingly operate openly and consensually with U.S. persons to the extent practicable when collecting foreign intelligence that does not concern criminal activities or threats to the national security.

B. THE FBI AS AN INTELLIGENCE AGENCY

The FBI is an intelligence agency as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions. The FBI's responsibilities in this area derive from various administrative and statutory sources. See, e.g., E.O. 12333; 28 U.S.C. 532 note (incorporating P.L. 108-458 §§ 2001-2003) and 534 note (incorporating P.L. 109-162 § 1107). Enhancement of the FBI's intelligence analysis capabilities and functions has consistently been recognized as a key priority in the legislative and administrative reform efforts following the

September 11, 2001, terrorist attacks:

[Counterterrorism] strategy should . . . encompass specific efforts to . . . enhance the depth and quality of domestic intelligence collection and analysis . . . [T]he FBI should strengthen and improve its domestic [intelligence] capability as fully and expeditiously as possible by immediately instituting measures to . . . significantly improve strategic analytical capabilities (Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, S. Rep. No. 351 & H.R. Rep. No. 792, 107th Cong., 2d Sess. 4-7 (2002) (errata print).)

A “smart” government would *integrate* all sources of information to see the enemy as a whole. Integrated all-source analysis should also inform and shape strategies to collect more intelligence. . . . The importance of integrated, all-source analysis cannot be overstated. Without it, it is not possible to “connect the dots.” (Final Report of the National Commission on Terrorist Attacks Upon the United States 401, 408 (2004).)

Part IV of these Guidelines accordingly authorizes the FBI to engage in intelligence analysis and planning, drawing on all lawful sources of information. The functions authorized under that Part include: (i) development of overviews and analyses concerning threats to and vulnerabilities of the United States and its interests, (ii) research and analysis to produce reports and assessments concerning matters relevant to investigative activities or other authorized FBI activities, and (iii) the operation of intelligence systems that facilitate and support investigations through the compilation and analysis of data and information on an ongoing basis.

C. OVERSIGHT

The activities authorized by these Guidelines must be conducted in a manner consistent with all applicable laws, regulations, and policies, including those protecting privacy and civil liberties. The Justice Department’s National Security Division and the FBI’s Inspection Division, Office of General Counsel, and Office of Integrity and Compliance, along with other components, share the responsibility to ensure that the Department meets these goals with respect to national security and foreign intelligence matters. In particular, the National Security Division’s Oversight Section, in conjunction with the FBI’s Office of General Counsel, is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities. These reviews, conducted at FBI field offices and headquarter units, broadly examine such activities for compliance with these Guidelines and other applicable requirements.

Various features of these Guidelines facilitate the National Security Division’s oversight functions. Relevant requirements and provisions include: (i) required notification by the FBI to the National Security Division concerning full investigations that involve foreign intelligence collection or investigation of United States persons in relation to threats of the national security, (ii) annual reports by the FBI to the National Security Division concerning the FBI’s foreign

intelligence collection program, including information on the scope and nature of foreign intelligence collection activities in each FBI field office, and (iii) access by the National Security Division to information obtained by the FBI through national security or foreign intelligence activities and general authority for the Assistant Attorney General for National Security to obtain reports from the FBI concerning these activities.

Pursuant to these Guidelines, other Attorney General guidelines, and institutional assignments of responsibility within the Justice Department, additional Department components – including the Criminal Division, the United States Attorneys' Offices, and the Office of Privacy and Civil Liberties – are involved in the common endeavor with the FBI of ensuring that the activities of all Department components are lawful, appropriate, and ethical as well as effective. Examples include the involvement of both FBI and prosecutorial personnel in the review of undercover operations involving sensitive circumstances, notice requirements for investigations involving sensitive investigative matters (as defined in Part VII.N of these Guidelines), and notice and oversight provisions for enterprise investigations, which may involve a broad examination of groups implicated in the gravest criminal and national security threats. These requirements and procedures help to ensure that the rule of law is respected in the Department's activities and that public confidence is maintained in these activities.

I. GENERAL AUTHORITIES AND PRINCIPLES

A. SCOPE

These Guidelines apply to investigative activities conducted by the FBI within the United States or outside the territories of all countries. They do not apply to investigative activities of the FBI in foreign countries, which are governed by the Attorney General's Guidelines for Extraterritorial FBI Operations.

B. GENERAL AUTHORITIES

1. The FBI is authorized to conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence, as provided in Part II of these Guidelines.
2. The FBI is authorized to provide investigative assistance to other federal agencies, state, local, or tribal agencies, and foreign agencies as provided in Part III of these Guidelines.
3. The FBI is authorized to conduct intelligence analysis and planning as provided in Part IV of these Guidelines.
4. The FBI is authorized to retain and share information obtained pursuant to these Guidelines as provided in Part VI of these Guidelines.

C. USE OF AUTHORITIES AND METHODS

1. Protection of the United States and Its People

The FBI shall fully utilize the authorities provided and the methods authorized by these Guidelines to protect the United States and its people from crimes in violation of federal law and threats to the national security, and to further the foreign intelligence objectives of the United States.

2. Choice of Methods

- a. The conduct of investigations and other activities authorized by these Guidelines may present choices between the use of different investigative methods that are each operationally sound and effective, but that are more or less intrusive, considering such factors as the effect on the privacy and civil liberties of individuals and potential damage to reputation. The least intrusive method feasible is to be used in such situations. It is recognized,

however, that the choice of methods is a matter of judgment. The FBI shall not hesitate to use any lawful method consistent with these Guidelines, even if intrusive, where the degree of intrusiveness is warranted in light of the seriousness of a criminal or national security threat or the strength of the information indicating its existence, or in light of the importance of foreign intelligence sought to the United States' interests. This point is to be particularly observed in investigations relating to terrorism.

- b. United States persons shall be dealt with openly and consensually to the extent practicable when collecting foreign intelligence that does not concern criminal activities or threats to the national security.

3. Respect for Legal Rights

All activities under these Guidelines must have a valid purpose consistent with these Guidelines, and must be carried out in conformity with the Constitution and all applicable statutes, executive orders, Department of Justice regulations and policies, and Attorney General guidelines. These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. These Guidelines also do not authorize any conduct prohibited by the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

4. Undisclosed Participation in Organizations

Undisclosed participation in organizations in activities under these Guidelines shall be conducted in accordance with FBI policy approved by the Attorney General.

5. Maintenance of Records under the Privacy Act

The Privacy Act restricts the maintenance of records relating to certain activities of individuals who are United States persons, with exceptions for circumstances in which the collection of such information is pertinent to and within the scope of an authorized law enforcement activity or is otherwise authorized by statute. 5 U.S.C. 552a(e)(7). Activities authorized by these Guidelines are authorized law enforcement activities or activities for which there is otherwise statutory authority for purposes of the Privacy Act. These Guidelines, however, do not provide an exhaustive enumeration of authorized FBI law enforcement activities or FBI activities for which there is otherwise statutory authority, and no restriction is implied with respect to such activities carried out by the FBI pursuant to other

authorities. Further questions about the application of the Privacy Act to authorized activities of the FBI should be addressed to the FBI Office of the General Counsel, the FBI Privacy and Civil Liberties Unit, or the Department of Justice Office of Privacy and Civil Liberties.

D. NATURE AND APPLICATION OF THE GUIDELINES

1. Repealers

These Guidelines supersede the following guidelines, which are hereby repealed:

- a. The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002) and all predecessor guidelines thereto.
- b. The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) and all predecessor guidelines thereto.
- c. The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006).
- d. The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988).
- e. The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976).

2. Status as Internal Guidance

These Guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

3. Departures from the Guidelines

Departures from these Guidelines must be approved by the Director of the FBI, by the Deputy Director of the FBI, or by an Executive Assistant Director designated

by the Director. If a departure is necessary without such prior approval because of the immediacy or gravity of a threat to the safety of persons or property or to the national security, the Director, the Deputy Director, or a designated Executive Assistant Director shall be notified as soon thereafter as practicable. The FBI shall provide timely written notice of departures from these Guidelines to the Criminal Division and the National Security Division, and those divisions shall notify the Attorney General and the Deputy Attorney General. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution and laws of the United States.

4. Other Activities Not Limited

These Guidelines apply to FBI activities as provided herein and do not limit other authorized activities of the FBI, such as the FBI's responsibilities to conduct background checks and inquiries concerning applicants and employees under federal personnel security programs, the FBI's maintenance and operation of national criminal records systems and preparation of national crime statistics, and the forensic assistance and administration functions of the FBI Laboratory.

II. INVESTIGATIONS AND INTELLIGENCE GATHERING

This Part of the Guidelines authorizes the FBI to conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence.

When an authorized purpose exists, the focus of activities authorized by this Part may be whatever the circumstances warrant. The subject of such an activity may be, for example, a particular crime or threatened crime; conduct constituting a threat to the national security; an individual, group, or organization that may be involved in criminal or national security-threatening conduct; or a topical matter of foreign intelligence interest.

Investigations may also be undertaken for protective purposes in relation to individuals, groups, or other entities that may be targeted for criminal victimization or acquisition, or for terrorist attack or other depredations by the enemies of the United States. For example, the participation of the FBI in special events management, in relation to public events or other activities whose character may make them attractive targets for terrorist attack, is an authorized exercise of the authorities conveyed by these Guidelines. Likewise, FBI counterintelligence activities directed to identifying and securing facilities, personnel, or information that may be targeted for infiltration, recruitment, or acquisition by foreign intelligence services are authorized exercises of the authorities conveyed by these Guidelines.

The identification and recruitment of human sources – who may be able to provide or obtain information relating to criminal activities, information relating to terrorism, espionage, or other threats to the national security, or information relating to matters of foreign intelligence interest – is also critical to the effectiveness of the FBI's law enforcement, national security, and intelligence programs, and activities undertaken for this purpose are authorized and encouraged.

The scope of authorized activities under this Part is not limited to "investigation" in a narrow sense, such as solving particular cases or obtaining evidence for use in particular criminal prosecutions. Rather, these activities also provide critical information needed for broader analytic and intelligence purposes to facilitate the solution and prevention of crime, protect the national security, and further foreign intelligence objectives. These purposes include use of the information in intelligence analysis and planning under Part IV, and dissemination of the information to other law enforcement, Intelligence Community, and White House agencies under Part VI. Information obtained at all stages of investigative activity is accordingly to be retained and disseminated for these purposes as provided in these Guidelines, or in FBI policy consistent with these Guidelines, regardless of whether it furthers investigative objectives in a narrower or more immediate sense.

In the course of activities under these Guidelines, the FBI may incidentally obtain information relating to matters outside of its areas of primary investigative responsibility. For example, information relating to violations of state or local law or foreign law may be

incidentally obtained in the course of investigating federal crimes or threats to the national security or in collecting foreign intelligence. These Guidelines do not bar the acquisition of such information in the course of authorized investigative activities, the retention of such information, or its dissemination as appropriate to the responsible authorities in other agencies or jurisdictions. Part VI of these Guidelines includes specific authorizations and requirements for sharing such information with relevant agencies and officials.

This Part authorizes different levels of information gathering activity, which afford the FBI flexibility, under appropriate standards and procedures, to adapt the methods utilized and the information sought to the nature of the matter under investigation and the character of the information supporting the need for investigation.

Assessments, authorized by Subpart A of this Part, require an authorized purpose but not any particular factual predication. For example, to carry out its central mission of preventing the commission of terrorist acts against the United States and its people, the FBI must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. Likewise, in the exercise of its protective functions, the FBI is not constrained to wait until information is received indicating that a particular event, activity, or facility has drawn the attention of those who would threaten the national security. Rather, the FBI must take the initiative to secure and protect activities and entities whose character may make them attractive targets for terrorism or espionage. The proactive investigative authority conveyed in assessments is designed for, and may be utilized by, the FBI in the discharge of these responsibilities. For example, assessments may be conducted as part of the FBI's special events management activities.

More broadly, detecting and interrupting criminal activities at their early stages, and preventing crimes from occurring in the first place, is preferable to allowing criminal plots and activities to come to fruition. Hence, assessments may be undertaken proactively with such objectives as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization by such activities; and identifying and assessing individuals who may have value as human sources. For example, assessment activities may involve proactively surfing the Internet to find publicly accessible websites and services through which recruitment by terrorist organizations and promotion of terrorist crimes is openly taking place; through which child pornography is advertised and traded; through which efforts are made by sexual predators to lure children for purposes of sexual abuse; or through which fraudulent schemes are perpetrated against the public.

The methods authorized in assessments are generally those of relatively low intrusiveness, such as obtaining publicly available information, checking government records,

and requesting information from members of the public. These Guidelines do not impose supervisory approval requirements in assessments, given the types of techniques that are authorized at this stage (e.g., perusing the Internet for publicly available information). However, FBI policy will prescribe supervisory approval requirements for certain assessments, considering such matters as the purpose of the assessment and the methods being utilized.

Beyond the proactive information gathering functions described above, assessments may be used when allegations or other information concerning crimes or threats to the national security is received or obtained, and the matter can be checked out or resolved through the relatively non-intrusive methods authorized in assessments. The checking of investigative leads in this manner can avoid the need to proceed to more formal levels of investigative activity, if the results of an assessment indicate that further investigation is not warranted.

Subpart B of this Part authorizes a second level of investigative activity, predicated investigations. The purposes or objectives of predicated investigations are essentially the same as those of assessments, but predication as provided in these Guidelines is needed – generally, allegations, reports, facts or circumstances indicative of possible criminal or national security-threatening activity, or the potential for acquiring information responsive to foreign intelligence requirements – and supervisory approval must be obtained, to initiate predicated investigations. Corresponding to the stronger predication and approval requirements, all lawful methods may be used in predicated investigations. A classified directive provides further specification concerning circumstances supporting certain predicated investigations.

Predicated investigations that concern federal crimes or threats to the national security are subdivided into preliminary investigations and full investigations. Preliminary investigations may be initiated on the basis of any allegation or information indicative of possible criminal or national security-threatening activity, but more substantial factual predication is required for full investigations. While time limits are set for the completion of preliminary investigations, full investigations may be pursued without preset limits on their duration.

The final investigative category under this Part of the Guidelines is enterprise investigations, authorized by Subpart C, which permit a general examination of the structure, scope, and nature of certain groups and organizations. Enterprise investigations are a type of full investigations. Hence, they are subject to the purpose, approval, and predication requirements that apply to full investigations, and all lawful methods may be used in carrying them out. The distinctive characteristic of enterprise investigations is that they concern groups or organizations that may be involved in the most serious criminal or national security threats to the public – generally, patterns of racketeering activity, terrorism or other threats to the national security, or the commission of offenses characteristically involved in terrorism as described in 18 U.S.C. 2332b(g)(5)(B). A broad examination of the characteristics of groups satisfying these criteria is authorized in enterprise investigations, including any relationship of the group to a foreign power, its size and composition, its geographic dimensions and finances, its past acts and goals, and its capacity for harm.

A. ASSESSMENTS

1. Purposes

Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

2. Approval

The conduct of assessments is subject to any supervisory approval requirements prescribed by FBI policy.

3. Authorized Activities

Activities that may be carried out for the purposes described in paragraph 1. in an assessment include:

- a. seeking information, proactively or in response to investigative leads, relating to:
 - i. activities constituting violations of federal criminal law or threats to the national security,
 - ii. the involvement or role of individuals, groups, or organizations in such activities; or
 - iii. matters of foreign intelligence interest responsive to foreign intelligence requirements;
- b. identifying and obtaining information about potential targets of or vulnerabilities to criminal activities in violation of federal law or threats to the national security;
- c. seeking information to identify potential human sources, assess the suitability, credibility, or value of individuals as human sources, validate human sources, or maintain the cover or credibility of human sources, who may be able to provide or obtain information relating to criminal activities in violation of federal law, threats to the national security, or matters of foreign intelligence interest; and
- d. obtaining information to inform or facilitate intelligence analysis and planning as described in Part IV of these Guidelines.

4. Authorized Methods

Only the following methods may be used in assessments:

- a. Obtain publicly available information.
- b. Access and examine FBI and other Department of Justice records, and obtain information from any FBI or other Department of Justice personnel.
- c. Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.
- d. Use online services and resources (whether nonprofit or commercial).
- e. Use and recruit human sources in conformity with the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
- f. Interview or request information from members of the public and private entities.
- g. Accept information voluntarily provided by governmental or private entities.
- h. Engage in observation or surveillance not requiring a court order.
- i. Grand jury subpoenas for telephone or electronic mail subscriber information.

B. PREDICATED INVESTIGATIONS

1. Purposes

Predicated investigations may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

2. Approval

The initiation of a predicated investigation requires supervisory approval at a level or levels specified by FBI policy. A predicated investigation based on paragraph 3.c. (relating to foreign intelligence) must be approved by a Special Agent in Charge or by an FBI Headquarters official as provided in such policy.

3. Circumstances Warranting Investigation

A predicated investigation may be initiated on the basis of any of the following circumstances:

- a. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.
- b. An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat.
- c. The investigation may obtain foreign intelligence that is responsive to a foreign intelligence requirement.

4. Preliminary and Full Investigations

A predicated investigation relating to a federal crime or threat to the national security may be conducted as a preliminary investigation or a full investigation. A predicated investigation that is based solely on the authority to collect foreign intelligence may be conducted only as a full investigation.

a. Preliminary investigations

i. Predication Required for Preliminary Investigations

A preliminary investigation may be initiated on the basis of information or an allegation indicating the existence of a circumstance described in paragraph 3.a.-b.

ii. Duration of Preliminary Investigations

A preliminary investigation must be concluded within six months of its initiation, which may be extended by up to six months by the Special Agent in Charge. Extensions of preliminary investigations beyond a year must be approved by FBI Headquarters.

iii. Methods Allowed in Preliminary Investigations

All lawful methods may be used in a preliminary investigation except for methods within the scope of Part V.A.11.-.13. of these Guidelines.

b. Full Investigations

i. Predication Required for Full Investigations

A full investigation may be initiated if there is an articulable factual basis for the investigation that reasonably indicates that a circumstance described in paragraph 3.a.-.b. exists or if a circumstance described in paragraph 3.c. exists.

ii. Methods Allowed in Full Investigations

All lawful methods may be used in a full investigation.

5. Notice Requirements

- a. An FBI field office shall notify FBI Headquarters and the United States Attorney or other appropriate Department of Justice official of the initiation by the field office of a predicated investigation involving a sensitive investigative matter. If the investigation is initiated by FBI Headquarters, FBI Headquarters shall notify the United States Attorney or other appropriate Department of Justice official of the initiation of such an investigation. If the investigation concerns a threat to the national security, an official of the National Security Division must be notified. The notice shall identify all sensitive investigative matters involved in the investigation.
- b. The FBI shall notify the National Security Division of:
 - i. the initiation of any full investigation of a United States person relating to a threat to the national security; and
 - ii. the initiation of any full investigation that is based on paragraph 3.c. (relating to foreign intelligence).
- c. The notifications under subparagraphs a. and b. shall be made as soon as practicable, but no later than 30 days after the initiation of an investigation.

- d. The FBI shall notify the Deputy Attorney General if FBI Headquarters disapproves a field office's initiation of a predicated investigation relating to a threat to the national security on the ground that the predication for the investigation is insufficient.

C. ENTERPRISE INVESTIGATIONS

1. Definition

A full investigation of a group or organization may be initiated as an enterprise investigation if there is an articulable factual basis for the investigation that reasonably indicates that the group or organization may have engaged or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for:

- a. a pattern of racketeering activity as defined in 18 U.S.C. 1961(5);
- b. international terrorism or other threat to the national security;
- c. domestic terrorism as defined in 18 U.S.C. 2331(5) involving a violation of federal criminal law;
- d. furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or
- e. an offense described in 18 U.S.C. 2332b(g)(5)(B) or 18 U.S.C. 43.

2. Scope

The information sought in an enterprise investigation may include a general examination of the structure, scope, and nature of the group or organization including: its relationship, if any, to a foreign power; the identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives; its finances and resources; its geographical dimensions; and its past and future activities and goals.

3. Notice and Reporting Requirements

- a. The responsible Department of Justice component for the purpose of notification and reports in enterprise investigations is the National Security Division, except that, for the purpose of notifications and reports in an enterprise investigation relating to a pattern of racketeering activity that does not involve an offense or offenses described in 18 U.S.C. 2332b(g)(5)(B), the responsible Department of Justice component is the

Organized Crime and Racketeering Section of the Criminal Division.

- b. An FBI field office shall notify FBI Headquarters of the initiation by the field office of an enterprise investigation.
- c. The FBI shall notify the National Security Division or the Organized Crime and Racketeering Section of the initiation of an enterprise investigation, whether by a field office or by FBI Headquarters, and the component so notified shall notify the Attorney General and the Deputy Attorney General. The FBI shall also notify any relevant United States Attorney's Office, except that any investigation within the scope of Part VI.D.1.d of these Guidelines (relating to counterintelligence investigations) is to be treated as provided in that provision. Notifications by the FBI under this subparagraph shall be provided as soon as practicable, but no later than 30 days after the initiation of the investigation.
- d. The Assistant Attorney General for National Security or the Chief of the Organized Crime and Racketeering Section, as appropriate, may at any time request the FBI to provide a report on the status of an enterprise investigation and the FBI will provide such reports as requested.

III. ASSISTANCE TO OTHER AGENCIES

The FBI is authorized to provide investigative assistance to other federal, state, local, or tribal, or foreign agencies as provided in this Part.

The investigative assistance authorized by this Part is often concerned with the same objectives as those identified in Part II of these Guidelines – investigating federal crimes and threats to the national security, and collecting foreign intelligence. In some cases, however, investigative assistance to other agencies is legally authorized for purposes other than those identified in Part II, such as assistance in certain contexts to state or local agencies in the investigation of crimes under state or local law, see 28 U.S.C. 540, 540A, 540B, and assistance to foreign agencies in the investigation of foreign law violations pursuant to international agreements. Investigative assistance for such legally authorized purposes is permitted under this Part, even if it is not for purposes identified as grounds for investigation under Part II.

The authorities provided by this Part are cumulative to Part II and do not limit the FBI's investigative activities under Part II. For example, Subpart B.2 in this Part authorizes investigative activities by the FBI in certain circumstances to inform decisions by the President concerning the deployment of troops to deal with civil disorders, and Subpart B.3 authorizes investigative activities to facilitate demonstrations and related public health and safety measures. The requirements and limitations in these provisions for conducting investigations for the specified purposes do not limit the FBI's authority under Part II to investigate federal crimes or threats to the national security that occur in the context of or in connection with civil disorders or demonstrations.

A. THE INTELLIGENCE COMMUNITY

The FBI may provide investigative assistance (including operational support) to authorized intelligence activities of other Intelligence Community agencies.

B. FEDERAL AGENCIES GENERALLY

1. In General

The FBI may provide assistance to any federal agency in the investigation of federal crimes or threats to the national security or in the collection of foreign intelligence, and investigative assistance to any federal agency for any other purpose that may be legally authorized, including investigative assistance to the Secret Service in support of its protective responsibilities.

2. The President in Relation to Civil Disorders

a. At the direction of the Attorney General, the Deputy Attorney General, or

the Assistant Attorney General for the Criminal Division, the FBI shall collect information relating to actual or threatened civil disorders to assist the President in determining (pursuant to the authority of the President under 10 U.S.C. 331-33) whether use of the armed forces or militia is required and how a decision to commit troops should be implemented. The information sought shall concern such matters as:

- i. The size of the actual or threatened disorder, both in number of people involved or affected and in geographic area.
 - ii. The potential for violence.
 - iii. The potential for expansion of the disorder in light of community conditions and underlying causes of the disorder.
 - iv. The relationship of the actual or threatened disorder to the enforcement of federal law or court orders and the likelihood that state or local authorities will assist in enforcing those laws or orders.
 - v. The extent of state or local resources available to handle the disorder.
- b. Investigations under this paragraph will be authorized only for a period of 30 days, but the authorization may be renewed for subsequent 30 day periods.
 - c. Notwithstanding Subpart E.2 of this Part, the methods that may be used in an investigation under this paragraph are those described in subparagraphs a.-d., subparagraph f. (other than pretext interviews or requests), or subparagraph g. of Part II.A.4 of these Guidelines. The Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division may also authorize the use of other methods described in Part II.A.4.

3. Public Health and Safety Authorities in Relation to Demonstrations

- a. At the direction of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, the FBI shall collect information relating to demonstration activities that are likely to require the federal government to take action to facilitate the activities and provide public health and safety measures with respect to those activities. The information sought in such an investigation shall be that needed to facilitate an adequate federal response to ensure public health and safety

and to protect the exercise of First Amendment rights, such as:

- i. The time, place, and type of activities planned.
 - ii. The number of persons expected to participate.
 - iii. The expected means and routes of travel for participants and expected time of arrival.
 - iv. Any plans for lodging or housing of participants in connection with the demonstration.
- b. Notwithstanding Subpart E.2 of this Part, the methods that may be used in an investigation under this paragraph are those described in subparagraphs a.-d., subparagraph f. (other than pretext interviews or requests), or subparagraph g. of Part II.A.4 of these Guidelines. The Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division may also authorize the use of other methods described in Part II.A.4.

C. STATE, LOCAL, OR TRIBAL AGENCIES

The FBI may provide investigative assistance to state, local, or tribal agencies in the investigation of matters that may involve federal crimes or threats to the national security, or for such other purposes as may be legally authorized.

D. FOREIGN AGENCIES

1. At the request of foreign law enforcement, intelligence, or security agencies, the FBI may conduct investigations or provide assistance to investigations by such agencies, consistent with the interests of the United States (including national security interests) and with due consideration of the effect on any United States person. Investigations or assistance under this paragraph must be approved as provided by FBI policy. The FBI shall notify the National Security Division concerning investigation or assistance under this paragraph where: (i) FBI Headquarters approval for the activity is required pursuant to the approval policy adopted by the FBI for purposes of this paragraph, and (ii) the activity relates to a threat to the national security. Notification to the National Security Division shall be made as soon as practicable but no later than 30 days after the approval. Provisions regarding notification to or coordination with the Central Intelligence Agency by the FBI in memoranda of understanding or agreements with the Central Intelligence Agency may also apply to activities under this paragraph.
2. The FBI may not provide assistance to foreign law enforcement, intelligence, or

security officers conducting investigations within the United States unless such officers have provided prior notification to the Attorney General as required by 18 U.S.C. 951.

3. The FBI may conduct background inquiries concerning consenting individuals when requested by foreign government agencies.
4. The FBI may provide other material and technical assistance to foreign governments to the extent not otherwise prohibited by law.

E. APPLICABLE STANDARDS AND PROCEDURES

1. Authorized investigative assistance by the FBI to other agencies under this Part includes joint operations and activities with such agencies.
2. All lawful methods may be used in investigative assistance activities under this Part.
3. Where the methods used in investigative assistance activities under this Part go beyond the methods authorized in assessments under Part II.A.4 of these Guidelines, the following apply:
 - a. Supervisory approval must be obtained for the activity at a level or levels specified in FBI policy.
 - b. Notice must be provided concerning sensitive investigative matters in the manner described in Part II.B.5.
 - c. A database or records system must be maintained that permits, with respect to each such activity, the prompt retrieval of the status of the activity (open or closed), the dates of opening and closing, and the basis for the activity. This database or records system may be combined with the database or records system for predicated investigations required by Part VI.A.2.

IV. INTELLIGENCE ANALYSIS AND PLANNING

The FBI is authorized to engage in analysis and planning. The FBI's analytic activities enable the FBI to identify and understand trends, causes, and potential indicia of criminal activity and other threats to the United States that would not be apparent from the investigation of discrete matters alone. By means of intelligence analysis and strategic planning, the FBI can more effectively discover crimes, threats to the national security, and other matters of national intelligence interest and can provide the critical support needed for the effective discharge of its investigative responsibilities and other authorized activities. For example, analysis of threats in the context of special events management, concerning public events or activities that may be targeted for terrorist attack, is an authorized activity under this Part.

In carrying out its intelligence functions under this Part, the FBI is authorized to draw on all lawful sources of information, including but not limited to the results of investigative activities under these Guidelines. Investigative activities under these Guidelines and other legally authorized activities through which the FBI acquires information, data, or intelligence may properly be utilized, structured, and prioritized so as to support and effectuate the FBI's intelligence mission. The remainder of this Part provides further specification concerning activities and functions authorized as part of that mission.

A. STRATEGIC INTELLIGENCE ANALYSIS

The FBI is authorized to develop overviews and analyses of threats to and vulnerabilities of the United States and its interests in areas related to the FBI's responsibilities, including domestic and international criminal threats and activities; domestic and international activities, circumstances, and developments affecting the national security; and matters relevant to the conduct of the United States' foreign affairs. The overviews and analyses prepared under this Subpart may encompass present, emergent, and potential threats and vulnerabilities, their contexts and causes, and identification and analysis of means of responding to them.

B. REPORTS AND ASSESSMENTS GENERALLY

The FBI is authorized to conduct research, analyze information, and prepare reports and assessments concerning matters relevant to authorized FBI activities, such as reports and assessments concerning: types of criminals or criminal activities; organized crime groups; terrorism, espionage, or other threats to the national security; foreign intelligence matters; or the scope and nature of criminal activity in particular geographic areas or sectors of the economy.

C. INTELLIGENCE SYSTEMS

The FBI is authorized to operate intelligence, identification, tracking, and information

systems in support of authorized investigative activities, or for such other or additional purposes as may be legally authorized, such as intelligence and tracking systems relating to terrorists, gangs, or organized crime groups.

V. AUTHORIZED METHODS

A. PARTICULAR METHODS

All lawful investigative methods may be used in activities under these Guidelines as authorized by these Guidelines. Authorized methods include, but are not limited to, those identified in the following list. The methods identified in the list are in some instances subject to special restrictions or review or approval requirements as noted:

1. The methods described in Part II.A.4 of these Guidelines.
2. Mail covers.
3. Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers).
4. Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. Where a sensitive monitoring circumstance is involved, the monitoring must be approved by the Criminal Division or, if the investigation concerns a threat to the national security or foreign intelligence, by the National Security Division.
5. Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. (The methods described in this paragraph usually do not require court orders or warrants unless they involve physical trespass or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.)
6. Polygraph examinations.
7. Undercover operations. In investigations relating to activities in violation of federal criminal law that do not concern threats to the national security or foreign intelligence, undercover operations must be carried out in conformity with the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. In investigations that are not subject to the preceding sentence because they concern threats to the national security or foreign intelligence, undercover operations involving religious or political organizations must be reviewed and approved by FBI Headquarters, with participation by the National Security Division in the review process.
8. Compulsory process as authorized by law, including grand jury subpoenas and

other subpoenas, National Security Letters (15 U.S.C. 1681u, 1681v; 18 U.S.C. 2709; 12 U.S.C. 3414(a)(5)(A); 50 U.S.C. 436), and Foreign Intelligence Surveillance Act orders for the production of tangible things (50 U.S.C. 1861-63).

9. Accessing stored wire and electronic communications and transactional records in conformity with chapter 121 of title 18, United States Code (18 U.S.C. 2701-2712).
10. Use of pen registers and trap and trace devices in conformity with chapter 206 of title 18, United States Code (18 U.S.C. 3121-3127), or the Foreign Intelligence Surveillance Act (50 U.S.C. 1841-1846).
11. Electronic surveillance in conformity with chapter 119 of title 18, United States Code (18 U.S.C. 2510-2522), the Foreign Intelligence Surveillance Act, or Executive Order 12333 § 2.5.
12. Physical searches, including mail openings, in conformity with Rule 41 of the Federal Rules of Criminal Procedure, the Foreign Intelligence Surveillance Act, or Executive Order 12333 § 2.5. A classified directive provides additional limitation on certain searches.
13. Acquisition of foreign intelligence information in conformity with title VII of the Foreign Intelligence Surveillance Act.

B. SPECIAL REQUIREMENTS

Beyond the limitations noted in the list above relating to particular investigative methods, the following requirements are to be observed:

1. Contacts with Represented Persons

Contact with represented persons may implicate legal restrictions and affect the admissibility of resulting evidence. Hence, if an individual is known to be represented by counsel in a particular matter, the FBI will follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to counsel. The Special Agent in Charge and the United States Attorney or their designees shall consult periodically on applicable law and Department procedure. Where issues arise concerning the consistency of contacts with represented persons with applicable attorney conduct rules, the United States Attorney's Office should consult with the Professional Responsibility Advisory Office.

2. Use of Classified Investigative Technologies

Inappropriate use of classified investigative technologies may risk the compromise of such technologies. Hence, in an investigation relating to activities in violation of federal criminal law that does not concern a threat to the national security or foreign intelligence, the use of such technologies must be in conformity with the Procedures for the Use of Classified Investigative Technologies in Criminal Cases.

C. OTHERWISE ILLEGAL ACTIVITY

1. Otherwise illegal activity by an FBI agent or employee in an undercover operation relating to activity in violation of federal criminal law that does not concern a threat to the national security or foreign intelligence must be approved in conformity with the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. Approval of otherwise illegal activity in conformity with those guidelines is sufficient and satisfies any approval requirement that would otherwise apply under these Guidelines.
2. Otherwise illegal activity by a human source must be approved in conformity with the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
3. Otherwise illegal activity by an FBI agent or employee that is not within the scope of paragraph 1. must be approved by a United States Attorney's Office or a Department of Justice Division, except that a Special Agent in Charge may authorize the following:
 - a. otherwise illegal activity that would not be a felony under federal, state, local, or tribal law;
 - b. consensual monitoring of communications, even if a crime under state, local, or tribal law;
 - c. the controlled purchase, receipt, delivery, or sale of drugs, stolen property, or other contraband;
 - d. the payment of bribes;
 - e. the making of false representations in concealment of personal identity or the true ownership of a proprietary; and
 - f. conducting a money laundering transaction or transactions involving an aggregate amount not exceeding \$1 million.

However, in an investigation relating to a threat to the national security or foreign intelligence collection, a Special Agent in Charge may not authorize an activity that may constitute a violation of export control laws or laws that concern the proliferation of weapons of mass destruction. In such an investigation, a Special Agent in Charge may authorize an activity that may otherwise violate prohibitions of material support to terrorism only in accordance with standards established by the Director of the FBI and agreed to by the Assistant Attorney General for National Security.

4. The following activities may not be authorized:
 - a. Acts of violence.
 - b. Activities whose authorization is prohibited by law, including unlawful investigative methods, such as illegal electronic surveillance or illegal searches.

Subparagraph a., however, does not limit the right of FBI agents or employees to engage in any lawful use of force, including the use of force in self-defense or defense of others or otherwise in the lawful discharge of their duties.

5. An agent or employee may engage in otherwise illegal activity that could be authorized under this Subpart without the authorization required by paragraph 3. if necessary to meet an immediate threat to the safety of persons or property or to the national security, or to prevent the compromise of an investigation or the loss of a significant investigative opportunity. In such a case, prior to engaging in the otherwise illegal activity, every effort should be made by the agent or employee to consult with the Special Agent in Charge, and by the Special Agent in Charge to consult with the United States Attorney's Office or appropriate Department of Justice Division where the authorization of that office or division would be required under paragraph 3., unless the circumstances preclude such consultation. Cases in which otherwise illegal activity occurs pursuant to this paragraph without the authorization required by paragraph 3. shall be reported as soon as possible to the Special Agent in Charge, and by the Special Agent in Charge to FBI Headquarters and to the United States Attorney's Office or appropriate Department of Justice Division.
6. In an investigation relating to a threat to the national security or foreign intelligence collection, the National Security Division is the approving component for otherwise illegal activity for which paragraph 3. requires approval beyond internal FBI approval. However, officials in other components may approve otherwise illegal activity in such investigations as authorized by the Assistant Attorney General for National Security.

VI. RETENTION AND SHARING OF INFORMATION

A. RETENTION OF INFORMATION

1. The FBI shall retain records relating to activities under these Guidelines in accordance with a records retention plan approved by the National Archives and Records Administration.
2. The FBI shall maintain a database or records system that permits, with respect to each predicated investigation, the prompt retrieval of the status of the investigation (open or closed), the dates of opening and closing, and the basis for the investigation.

B. INFORMATION SHARING GENERALLY

1. Permissive Sharing

Consistent with law and with any applicable agreements or understandings with other agencies concerning the dissemination of information they have provided, the FBI may disseminate information obtained or produced through activities under these Guidelines:

- a. within the FBI and to other components of the Department of Justice;
- b. to other federal, state, local, or tribal agencies if related to their responsibilities and, in relation to other Intelligence Community agencies, the determination whether the information is related to the recipient's responsibilities may be left to the recipient;
- c. to congressional committees as authorized by the Department of Justice Office of Legislative Affairs;
- d. to foreign agencies if the information is related to their responsibilities and the dissemination is consistent with the interests of the United States (including national security interests) and the FBI has considered the effect such dissemination may reasonably be expected to have on any identifiable United States person;
- e. if the information is publicly available, does not identify United States persons, or is disseminated with the consent of the person whom it concerns;
- f. if the dissemination is necessary to protect the safety or security of persons or property, to protect against or prevent a crime or threat to the national

security, or to obtain information for the conduct of an authorized FBI investigation; or

- g. if dissemination of the information is otherwise permitted by the Privacy Act (5 U.S.C. 552a).

2. Required Sharing

The FBI shall share and disseminate information as required by statutes, treaties, Executive Orders, Presidential directives, National Security Council directives, Homeland Security Council directives, and Attorney General-approved policies, memoranda of understanding, or agreements.

C. INFORMATION RELATING TO CRIMINAL MATTERS

1. Coordination with Prosecutors

In an investigation relating to possible criminal activity in violation of federal law, the agent conducting the investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances warrant and as requested by the prosecutor. When, during such an investigation, a matter appears arguably to warrant prosecution, the agent shall present the relevant facts to the appropriate federal prosecutor. Information on investigations that have been closed shall be available on request to a United States Attorney or his or her designee or an appropriate Department of Justice official.

2. Criminal Matters Outside FBI Jurisdiction

When credible information is received by an FBI field office concerning serious criminal activity not within the FBI's investigative jurisdiction, the field office shall promptly transmit the information or refer the complainant to a law enforcement agency having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of a human source, interfere with a human source's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then, whenever feasible, the FBI field office shall make at least limited disclosure to a law enforcement agency or agencies having jurisdiction, and full disclosure shall be made as soon as the need for restricting disclosure is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make periodic reports to the Deputy Attorney General on such nondisclosures and incomplete disclosures, in a form suitable to protect the identity of human sources.

3. Reporting of Criminal Activity

- a. When it appears that an FBI agent or employee has engaged in criminal activity in the course of an investigation under these Guidelines, the FBI shall notify the United States Attorney's Office or an appropriate Department of Justice Division. When it appears that a human source has engaged in criminal activity in the course of an investigation under these Guidelines, the FBI shall proceed as provided in the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources. When information concerning possible criminal activity by any other person appears in the course of an investigation under these Guidelines, the FBI shall initiate an investigation of the criminal activity if warranted, and shall proceed as provided in paragraph 1. or 2.
- b. The reporting requirements under this paragraph relating to criminal activity by FBI agents or employees or human sources do not apply to otherwise illegal activity that is authorized in conformity with these Guidelines or other Attorney General guidelines or to minor traffic offenses.

D. INFORMATION RELATING TO NATIONAL SECURITY AND FOREIGN INTELLIGENCE MATTERS

The general principle reflected in current laws and policies is that there is a responsibility to provide information as consistently and fully as possible to agencies with relevant responsibilities to protect the United States and its people from terrorism and other threats to the national security, except as limited by specific constraints on such sharing. The FBI's responsibilities in this area include carrying out the requirements of the Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing (March 4, 2003), or any successor memorandum of understanding or agreement. Specific requirements also exist for internal coordination and consultation with other Department of Justice components, and for provision of national security and foreign intelligence information to White House agencies, as provided in the ensuing paragraphs.

1. Department of Justice

- a. The National Security Division shall have access to all information obtained by the FBI through activities relating to threats to the national security or foreign intelligence. The Director of the FBI and the Assistant Attorney General for National Security shall consult concerning these activities whenever requested by either of them, and the FBI shall provide such reports and information concerning these activities as the Assistant

Attorney General for National Security may request. In addition to any reports or information the Assistant Attorney General for National Security may specially request under this subparagraph, the FBI shall provide annual reports to the National Security Division concerning its foreign intelligence collection program, including information concerning the scope and nature of foreign intelligence collection activities in each FBI field office.

- b. The FBI shall keep the National Security Division apprised of all information obtained through activities under these Guidelines that is necessary to the ability of the United States to investigate or protect against threats to the national security, which shall include regular consultations between the FBI and the National Security Division to exchange advice and information relevant to addressing such threats through criminal prosecution or other means.
- c. Subject to subparagraphs d. and e., relevant United States Attorneys' Offices shall have access to and shall receive information from the FBI relating to threats to the national security, and may engage in consultations with the FBI relating to such threats, to the same extent as the National Security Division. The relevant United States Attorneys' Offices shall receive such access and information from the FBI field offices.
- d. In a counterintelligence investigation – i.e., an investigation relating to a matter described in Part VII.S.2 of these Guidelines – the FBI's provision of information to and consultation with a United States Attorney's Office are subject to authorization by the National Security Division. In consultation with the Executive Office for United States Attorneys and the FBI, the National Security Division shall establish policies setting forth circumstances in which the FBI will consult with the National Security Division prior to informing relevant United States Attorneys' Offices about such an investigation. The policies established by the National Security Division under this subparagraph shall (among other things) provide that:
 - i. the National Security Division will, within 30 days, authorize the FBI to share with the United States Attorneys' Offices information relating to certain espionage investigations, as defined by the policies, unless such information is withheld because of substantial national security considerations; and
 - ii. the FBI may consult freely with United States Attorneys' Offices concerning investigations within the scope of this subparagraph during an emergency, so long as the National Security Division is

notified of such consultation as soon as practical after the consultation.

- e. Information shared with a United States Attorney's Office pursuant to subparagraph c. or d. shall be disclosed only to the United States Attorney or any Assistant United States Attorneys designated by the United States Attorney as points of contact to receive such information. The United States Attorneys and designated Assistant United States Attorneys shall have appropriate security clearances and shall receive training in the handling of classified information and information derived from the Foreign Intelligence Surveillance Act, including training concerning the secure handling and storage of such information and training concerning requirements and limitations relating to the use, retention, and dissemination of such information.
- f. The disclosure and sharing of information by the FBI under this paragraph is subject to any limitations required in orders issued by the Foreign Intelligence Surveillance Court, controls imposed by the originators of sensitive material, and restrictions established by the Attorney General or the Deputy Attorney General in particular cases. The disclosure and sharing of information by the FBI under this paragraph that may disclose the identity of human sources is governed by the relevant provisions of the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.

2. White House

In order to carry out their responsibilities, the President, the Vice President, the Assistant to the President for National Security Affairs, the Assistant to the President for Homeland Security Affairs, the National Security Council and its staff, the Homeland Security Council and its staff, and other White House officials and offices require information from all federal agencies, including foreign intelligence, and information relating to international terrorism and other threats to the national security. The FBI accordingly may disseminate to the White House foreign intelligence and national security information obtained through activities under these Guidelines, subject to the following standards and procedures:

- a. Requests to the FBI for such information from the White House shall be made through the National Security Council staff or Homeland Security Council staff including, but not limited to, the National Security Council Legal and Intelligence Directorates and Office of Combating Terrorism, or through the President's Intelligence Advisory Board or the Counsel to the President.

- b. Compromising information concerning domestic officials or political organizations, or information concerning activities of United States persons intended to affect the political process in the United States, may be disseminated to the White House only with the approval of the Attorney General, based on a determination that such dissemination is needed for foreign intelligence purposes, for the purpose of protecting against international terrorism or other threats to the national security, or for the conduct of foreign affairs. However, such approval is not required for dissemination to the White House of information concerning efforts of foreign intelligence services to penetrate the White House, or concerning contacts by White House personnel with foreign intelligence service personnel.
- c. Examples of types of information that are suitable for dissemination to the White House on a routine basis include, but are not limited to:
 - i. information concerning international terrorism;
 - ii. information concerning activities of foreign intelligence services in the United States;
 - iii. information indicative of imminent hostilities involving any foreign power;
 - iv. information concerning potential cyber threats to the United States or its allies;
 - v. information indicative of policy positions adopted by foreign officials, governments, or powers, or their reactions to United States foreign policy initiatives;
 - vi. information relating to possible changes in leadership positions of foreign governments, parties, factions, or powers;
 - vii. information concerning foreign economic or foreign political matters that might have national security ramifications; and
 - viii. information set forth in regularly published national intelligence requirements.
- d. Communications by the FBI to the White House that relate to a national security matter and concern a litigation issue for a specific pending case must be made known to the Office of the Attorney General, the Office of

the Deputy Attorney General, or the Office of the Associate Attorney General. White House policy may specially limit or prescribe the White House personnel who may request information concerning such issues from the FBI.

- e. The limitations on dissemination of information by the FBI to the White House under these Guidelines do not apply to dissemination to the White House of information acquired in the course of an FBI investigation requested by the White House into the background of a potential employee or appointee, or responses to requests from the White House under Executive Order 10450.

3. Special Statutory Requirements

- a. Dissemination of information acquired under the Foreign Intelligence Surveillance Act is, to the extent provided in that Act, subject to minimization procedures and other requirements specified in that Act.
- b. Information obtained through the use of National Security Letters under 15 U.S.C. 1681v may be disseminated in conformity with the general standards of this Part. Information obtained through the use of National Security Letters under other statutes may be disseminated in conformity with the general standards of this Part, subject to any applicable limitations in their governing statutory provisions: 12 U.S.C. 3414(a)(5)(B); 15 U.S.C. 1681u(f); 18 U.S.C. 2709(d); 50 U.S.C. 436(e).

VII. DEFINITIONS

- A. **CONSENSUAL MONITORING:** monitoring of communications for which a court order or warrant is not legally required because of the consent of a party to the communication.
- B. **EMPLOYEE:** an FBI employee or an employee of another agency working under the direction and control of the FBI.
- C. **FOR OR ON BEHALF OF A FOREIGN POWER:** the determination that activities are for or on behalf of a foreign power shall be based on consideration of the extent to which the foreign power is involved in:
 - 1. control or policy direction;
 - 2. financial or material support; or
 - 3. leadership, assignments, or discipline.
- D. **FOREIGN COMPUTER INTRUSION:** the use or attempted use of any cyber-activity or other means, by, for, or on behalf of a foreign power to scan, probe, or gain unauthorized access into one or more U.S.-based computers.
- E. **FOREIGN INTELLIGENCE:** information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.
- F. **FOREIGN INTELLIGENCE REQUIREMENTS:**
 - 1. national intelligence requirements issued pursuant to authorization by the Director of National Intelligence, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives thereto;
 - 2. requests to collect foreign intelligence by the President or by Intelligence Community officials designated by the President; and
 - 3. directions to collect foreign intelligence by the Attorney General, the Deputy Attorney General, or an official designated by the Attorney General.
- G. **FOREIGN POWER:**
 - 1. a foreign government or any component thereof, whether or not recognized by the United States;

2. a faction of a foreign nation or nations, not substantially composed of United States persons;
 3. an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
 4. a group engaged in international terrorism or activities in preparation therefor;
 5. a foreign-based political organization, not substantially composed of United States persons; or
 6. an entity that is directed or controlled by a foreign government or governments.
- H. HUMAN SOURCE: a Confidential Human Source as defined in the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
- I. INTELLIGENCE ACTIVITIES: any activity conducted for intelligence purposes or to affect political or governmental processes by, for, or on behalf of a foreign power.
- J. INTERNATIONAL TERRORISM:
- Activities that:
1. involve violent acts or acts dangerous to human life that violate federal, state, local, or tribal criminal law or would violate such law if committed within the United States or a state, local, or tribal jurisdiction;
 2. appear to be intended:
 - i. to intimidate or coerce a civilian population;
 - ii. to influence the policy of a government by intimidation or coercion; or
 - iii. to affect the conduct of a government by assassination or kidnapping; and
 3. occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear to be intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.
- K. PROPRIETARY: a sole proprietorship, partnership, corporation, or other business entity operated on a commercial basis, which is owned, controlled, or operated wholly or in part on behalf of the FBI, and whose relationship with the FBI is concealed from third parties.

- L. **PUBLICLY AVAILABLE:** information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public.
- M. **RECORDS:** any records, databases, files, indices, information systems, or other retained information.
- N. **SENSITIVE INVESTIGATIVE MATTER:** an investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other Department of Justice officials.
- O. **SENSITIVE MONITORING CIRCUMSTANCE:**
 - 1. investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
 - 2. investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties;
 - 3. a party to the communication is in the custody of the Bureau of Prisons or the United States Marshals Service or is being or has been afforded protection in the Witness Security Program; or
 - 4. the Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested that the FBI obtain prior approval for the use of consensual monitoring in a specific investigation.
- P. **SPECIAL AGENT IN CHARGE:** the Special Agent in Charge of an FBI field office (including an Acting Special Agent in Charge), except that the functions authorized for Special Agents in Charge by these Guidelines may also be exercised by the Assistant Director in Charge or by any Special Agent in Charge designated by the Assistant Director in Charge in an FBI field office headed by an Assistant Director, and by FBI Headquarters officials designated by the Director of the FBI.
- Q. **SPECIAL EVENTS MANAGEMENT:** planning and conduct of public events or activities whose character may make them attractive targets for terrorist attack.

- R. STATE, LOCAL, OR TRIBAL: any state or territory of the United States or political subdivision thereof, the District of Columbia, or Indian tribe.
- S. THREAT TO THE NATIONAL SECURITY:
1. international terrorism;
 2. espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons;
 3. foreign computer intrusion; and
 4. other matters determined by the Attorney General, consistent with Executive Order 12333 or a successor order.
- T. UNITED STATES: when used in a geographic sense, means all areas under the territorial sovereignty of the United States.
- U. UNITED STATES PERSON:

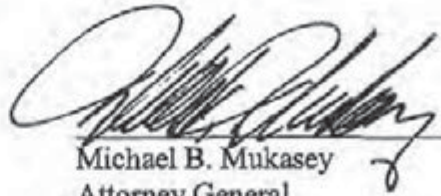
Any of the following, but not including any association or corporation that is a foreign power as defined in Subpart G.1.-.3.:

1. an individual who is a United States citizen or an alien lawfully admitted for permanent residence;
2. an unincorporated association substantially composed of individuals who are United States persons; or
3. a corporation incorporated in the United States.

In applying paragraph 2., if a group or organization in the United States that is affiliated with a foreign-based international organization operates directly under the control of the international organization and has no independent program or activities in the United States, the membership of the entire international organization shall be considered in determining whether it is substantially composed of United States persons. If, however, the U.S.-based group or organization has programs or activities separate from, or in addition to, those directed by the international organization, only its membership in the United States shall be considered in determining whether it is substantially composed of United States persons. A classified directive provides further guidance concerning the determination of United States person status.

- V. USE: when used with respect to human sources, means obtaining information from, tasking, or otherwise operating such sources.

Date: 7/29/08



Michael B. Mukasey
Attorney General