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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

(U) The Government's use of Section 702 is subject to extensive and rigorous oversight. As mandated by the Foreign Intelligence Surveillance Act (FISA), the use of Section 702 authorities is overseen by the Department of Justice (DOJ), the Office of the Director of National Intelligence (ODNI), the Foreign Intelligence Surveillance Court (FISC), and Congress, with additional internal Intelligence Community agency oversight. The following report summarizes the DOJ National Security Division's (NSD) and ODNI's oversight activities.¹ NSD and ODNI oversight activities focus upon the core protections found in the statute, targeting procedures, and minimization procedures; it also extends in varying degrees to compliance with all aspects of the governing statute, procedures, the Attorney General Acquisition Guidelines,² and the United States Constitution. NSD and ODNI comprehensively document Section 702 oversight activities and findings. Any incidents of non-compliance identified in the course of oversight reviews are reported in either letters or quarterly reports to the FISC as required by Rule 13(b) of the FISC's Rules of Procedure and documented in the Attorney General's semiannual report to Congress on use of Section 702. In addition, any compliance trends identified by NSD and ODNI's Section 702 oversight activities are reflected in the Section 702(I) Joint Assessment provided to the FISC and Congress.

(U) NSD and ODNI's oversight of the Intelligence Community's implementation of Section 702, as discussed in detail below, includes the following:

- Reviewing National Security Agency (NSA) and Federal Bureau of Investigation (FBI) targeting decisions;
- Reviewing United States person identifiers approved by NSA for querying unminimized Section 702-acquired information;
- Reviewing Central Intelligence Agency (CIA) content queries of unminimized Section 702-acquired information using United States person identifiers;
- Reviewing FBI United States person and non-United States person queries of unminimized Section 702-acquired information;
- Review of NSA, CIA, and FBI disseminations of Section 702-acquired information;
- Reporting to the FISC and Congress every instance of non-compliance identified; and

¹ (U) The Intelligence Community agencies that implement Section 702 have each developed their own internal oversight and compliance mechanisms to monitor implementation of the Section 702 authorities.

² (U) The Attorney General's Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (hereinafter "the Attorney General's Acquisition Guidelines") were adopted by the Attorney General, in consultation with the DNI, on August 5, 2008.

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- Assessing the Intelligence Community implementation of appropriate remedial actions to address compliance matters, including purging non-compliant data and recalling non-compliant disseminations.

A. (U) NSD/ODNI Reviews at the National Security Agency

(U) Personnel from NSD and ODNI conduct bi-monthly reviews at NSA in order to assess NSA's compliance with its Section 702 targeting and minimization procedures. These reviews focus on NSA targeting decisions, NSA's use of United States person identifiers to query Section 702-acquired data, and NSA's dissemination of United States person information.

1. (U) Targeting Decisions

(U) NSA's Section 702 targeting procedures require that each time NSA targets a communication facility (e.g., a telephone number or e-mail address) for collection under Section 702 that NSA document the basis for its decision. NSA regularly provides NSD and ODNI with a record of each targeting decision in a document referred to as a "tasking sheet." In relevant part, a tasking sheet includes: (1) the specific communications facility being tasked; (2) citations to the specific documents or communications that led the agency to determine that the user of that facility is reasonably assessed to be located outside the United States; (3) a description of such cited documents or communications; (4) a statement regarding the assessed non-United States person status of the user; and (5) a statement identifying the foreign power or foreign territory about which NSA expects to acquire foreign intelligence information. NSD personnel review every tasking sheet provided by NSA; ODNI reviews a sample of the tasking sheets. In addition to evaluating whether the targeting decisions complied with the targeting procedures, NSD and ODNI review targeting decisions for overall compliance with statutory and Constitutional limitations, such as the prohibition against reverse targeting.³ If NSD or ODNI is unable to initially determine from the information provided on the tasking sheet alone whether the targeting is appropriate, NSD and ODNI will either ask for further clarification or request that NSA provide any underlying documents or communications cited in the tasking sheet. These documents are reviewed at bi-monthly on-site reviews.⁴ Based upon information provided by the agencies, NSD and ODNI assess whether the targeting decision meets the substantive and documentation requirements of NSA's targeting procedures. Historically, NSD and ODNI have determined that approximately 0.1% of all taskings did not meet either the substantive or the documentation requirements of the NSA targeting procedures. Bi-monthly reports documenting the results of each review are submitted to Congress (as part of the semiannual reports) and the relevant agency. Any compliance incidents discovered in the course of NSD and ODNI's

³ (U) The ban on reverse targeting prohibits the Government from targeting a non-United States person located outside the United States when the real interest is to collect the communications of a person in the United States or any United States person.

⁴ (U) If the particular targeting decision was made by NSA in response to a nomination by the CIA or FBI, NSD and ODNI may also request additional information from CIA or FBI.

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oversight are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure⁵ and to Congress in semiannual reports required under 50 U.S.C. §1881f.

2. (U) United States Person Query Reviews

(U) In addition to a review of NSA targeting decisions, the bi-monthly reviews also assess NSA's use of United States person identifiers to query Section 702-acquired information. Prior to each bi-monthly review, NSA provides NSD and ODNI with a list of all United States person identifiers approved to be used to query Section 702-acquired content (as opposed to metadata-only queries, which are described below) during the review period. NSA also provides information detailing why the proposed use of the United States person identifier would be reasonably likely to return foreign intelligence information, the duration for which the United States person identifier has been authorized to be used as a query term, and any other relevant information. The joint NSD and ODNI oversight team reviews the list of approved United States person identifiers, and the foreign intelligence justification, to evaluate compliance with the minimization procedures.

(U) With respect to queries of Section 702-acquired metadata using a United States person identifier, NSA's internal procedures require that analysts document the basis for each metadata query prior to conducting the query. NSD reviews the documentation for 100% of these queries.

(U) If, upon review, NSD and ODNI are unable to determine from the documentation provided that the query is/was reasonably designed to return foreign intelligence information, as required by NSA's minimization procedures, or if NSD and ODNI have any other question regarding whether the queries comply with the applicable procedures, additional information is requested. All findings regarding both content and metadata queries are included in the bi-monthly reports, and any compliance incidents discovered in the course of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

3. (U) United States Person Disseminations

(U) The bi-monthly reviews also focus on NSA's dissemination of information of or concerning United States persons. Either prior to, or at, each bi-monthly review, NSA provides NSD and ODNI with a copy of all disseminations from the review period containing information of or concerning United States persons. NSD reviews all such disseminations to evaluate compliance with NSA's minimization procedures and statutory requirements; ODNI reviews a sample of such disseminations. NSD and ODNI also review a sample of NSA disseminations that were not identified by NSA as containing information of or concerning United States persons. All disseminations reviewed by NSD and ODNI are examined to assess whether any

⁵ (U) According to Rule 13(b), the Government "must immediately inform" the Court "[i]f the government discovers that any authority or approval granted by the Court has been implemented in a manner that did not comply with the Court's authorization or approval or with applicable law."

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information that appears to be of or concerning United States persons meets the applicable standard found in NSA's minimization procedures, whether other aspects of the dissemination requirements (to include limitations on the dissemination of attorney-client communications and the requirement of a FISA warning statement as required by 50 U.S.C. § 1806(b)) have been met, and whether the information disseminated is not indicative of reverse targeting of United States persons or persons located in the United States. All findings regarding these dissemination reviews are included in bi-monthly reports, and any compliance incidents discovered in the course of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

B. (U) NSD/ODNI Reviews at the Central Intelligence Agency

(U) Personnel from NSD and ODNI conduct bi-monthly reviews at CIA in order to assess CIA's compliance with its Section 702 minimization procedures.⁶ These reviews focus on CIA's use of United States person identifiers to query the content of unminimized Section 702-acquired data and CIA's retention and dissemination of communications containing United States person information.

1. (U) United States Person Queries

(U) Prior to each of the bi-monthly reviews, CIA provides NSD and ODNI with a list of every query of Section 702-acquired content in which a United States person identifier was used as a query term, as well as a contemporaneously written justification regarding why each query was reasonably designed to find and extract foreign intelligence information. NSD reviews CIA's foreign intelligence justification for every query of Section 702-acquired content using a United States person identifier; ODNI reviews a sample of this documentation.⁷ If, upon review, NSD and ODNI are unable to determine from the documentation provided that the query was reasonably designed to find and extract foreign intelligence information, as required by CIA's minimization procedures, or if NSD and ODNI have any other question regarding whether the query complies with the applicable procedures, additional information is requested. All findings regarding these CIA queries are included in bi-monthly reports, and any compliance incidents discovered in the course of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

⁶ (U) As noted above, NSD and ODNI may also ask for additional information from CIA with respect to Section 702 targeting decisions made by NSA in response to a nomination by CIA.

⁷ (U) NSD and ODNI do not review CIA queries of databases containing only metadata because the query standard for metadata-only repositories is more permissive than that for content.

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2. (U) United States Person Retention Decisions

(U) The bi-monthly reviews at CIA also include a review of decisions by CIA to retain communications containing United States person information. At the reviews, NSD and ODNI personnel discuss a sampling of individual retention decisions with CIA personnel to assess whether any United States person information that is being retained satisfies the appropriate standard set forth in CIA's minimization procedures. All findings regarding these CIA retention decisions are included in bi-monthly reports, and any compliance incidents discovered in the course of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

3. (U) United States Person Disseminations

(U) The bi-monthly reviews also focus on CIA's dissemination of information acquired under Section 702 that CIA identified as potentially containing United States person information. At each bi-monthly review, CIA provides NSD and ODNI with a copy of every dissemination from the review period containing United States person information; ODNI reviews a sample of such disseminations. NSD reviews each dissemination to assess compliance with CIA's minimization procedures and statutory requirements. Comparable to the NSA dissemination reviews, all disseminations reviewed by NSD and ODNI are examined to assess whether any information that appears to be of or concerning United States persons meets the applicable dissemination standard found in CIA's minimization procedures, whether other aspects of the dissemination requirements (to include limitations on the dissemination of attorney-client communications and the requirement of a FISA warning statement as required by 50 U.S.C. § 1806(b)) have been met, and whether the information disseminated is not indicative of reverse targeting of United States persons or persons located in the United States. All findings regarding these disseminations are included in bi-monthly reports, and any compliance incidents discovered as part of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

C. (U) NSD/ODNI Reviews at the Federal Bureau of Investigation

(U) Personnel from NSD and ODNI conduct regular reviews at FBI in order to assess FBI's compliance with its Section 702 targeting and minimization procedures. These reviews are conducted both at FBI Headquarters and FBI Field Offices. Specifically, NSD and ODNI review FBI targeting decisions, FBI's use of United States person identifiers to query Section 702-acquired data, and FBI's retention and dissemination of United States person information.

1. (U) Targeting Decisions

(U) The FBI's targeting procedures govern the acquisition of certain communications from selectors that have already been tasked by NSA in accordance with NSA's Section 702 targeting procedures. Approximately once each month, NSD reviews every instance in which

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the FBI's application of its targeting procedures revealed any information regarding the target, regardless of whether the information confirms or rebuts NSA's foreignness determination.⁸ ODNI reviews a sample of these same targeting decisions.⁹ The targeting decisions are reviewed for compliance with all aspects of the FBI's targeting procedures and the statute. Any follow-up questions regarding the FBI's evaluation of this information are discussed with FBI analysts and supervisory personnel. All findings regarding these FBI decisions are included in bi-monthly reports, and any compliance incidents discovered as part of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

2. (U) United States Person Queries

(U) As part of its general oversight responsibilities with respect to FISA, NSD conducts reviews at approximately 31 FBI field offices each year. ODNI attends some of these FBI field office reviews. As part of that oversight, NSD randomly selects a sample of FBI personnel who have conducted queries of FISA-acquired information, including Section 702-acquired information, and reviews a sample of those FBI queries to assess whether the queries have been reasonably designed to return foreign intelligence information or evidence of a crime.¹⁰ All findings regarding these FBI queries are included in monthly reports, and any compliance incidents discovered in the course of the oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

3. (U) United States Person Retention Decisions and Disseminations

(U) In addition to a review of FBI targeting decisions and queries, NSD and ODNI also focus on FBI's retention and dissemination of information of, or concerning, United States persons. NSD and ODNI conduct these reviews both at FBI Headquarters and during the visits to FBI field offices. At both the Headquarters and field office reviews, NSD reviews a sampling of FBI retention decisions to assess whether FBI personnel are retaining United States person information appropriately. Also at these reviews, FBI provides NSD and ODNI with all relevant disseminations containing information of or concerning United States persons. NSD reviews all such disseminations to assess compliance with FBI's Section 702 minimization procedures and statutory requirements.¹¹ Comparable to the NSA and CIA dissemination reviews, all disseminations reviewed by NSD and ODNI are examined to assess whether any information of

⁸ (U) Separately, as noted above, NSD and ODNI may also ask for additional information from FBI with respect to Section 702 targeting decisions made by NSA in response to a nomination by FBI.

⁹ (U) NSD also reviews a sampling of the FBI's application of its targeting procedures where FBI advises that no information regarding the target was discovered in FBI systems.

¹⁰ (U) NSD does not review FBI queries in databases that contain only metadata.

¹¹ (U) ODNI attends the Headquarters reviews and select field offices reviews. ODNI reviews a sample of the retention and dissemination decisions.

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or concerning United States persons meets the applicable standard for foreign intelligence information or evidence of a crime found in the FBI's minimization procedures, whether other aspects of the dissemination requirements have been met, and whether the information disseminated is not indicative of reverse targeting of United States persons or persons located in the United States. All findings regarding these retention and dissemination decisions are included in the relevant monthly report, and any compliance incidents discovered in the course of the NSD and ODNI oversight reviews are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

4. (U) Review of FBI Processing of Section 702 data

(U) Each year, NSD and ODNI review the FBI systems used to receive, route, and verify Section 702 data. At these reviews, FBI provides the joint NSD and ODNI oversight team with a briefing on the systems used to receive and process data acquired pursuant to the Section 702 certifications. The purpose of these reviews is to assess whether the FBI's systems for processing unminimized Section 702-acquired data comply with the applicable procedures.

D. (U) NSD/ODNI Reviews at the National Counterterrorism Center

(U) Each year, NSD and ODNI review the processes used by the National Counterterrorism Center (NCTC) for receipt and processing of communications acquired by FBI pursuant to Section 702. At each review, NCTC provides NSD and ODNI with a briefing on the systems used to access, receive, and process communications acquired by FBI pursuant to the Section 702 certifications.¹² The purpose of these reviews is to assess whether NCTC's systems for accessing, receiving, and processing minimized Section 702-acquired data comply with the NCTC Section 702 minimization procedures. To date, there have been no identified violations of NCTC's Section 702 minimization procedures.

E. (U) Reporting of Compliance Incidents to NSD/ODNI

(U) Each of the agencies must report potential compliance incidents to NSD and ODNI. For example, NSA must report to NSD and ODNI any error by NSA personnel in the application or implementation of NSA's targeting or minimization procedures, to include any instance of targeting or reverse targeting of a United States person or person in the United States, any error concerning the acquisition of information under a Section 702 Certification, and any error by a service provider. Each individual incident reported is reviewed by multiple NSD attorneys. All identified compliance incidents, and the resolution of those incidents, are then coordinated with ODNI and the relevant agencies. All identified compliance incidents are reported to the FISC

¹² (U) The NCTC Section 702 minimization procedures differ from the Section 702 minimization procedures of the other agencies with access to Section 702-acquired information. NCTC does not have access to unminimized Section 702-acquired information. Instead, NCTC has access to information that has first been minimized by FBI. The NCTC Section 702 minimization procedures provide for how NCTC personnel should handle Section 702-acquired information that FBI has uploaded or otherwise placed into certain FBI systems.

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pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in semiannual reports required under 50 U.S.C. §1881f.

(U) In addition to notifying the FISC, Section 707(b)(1) of FISA requires a report at least every six months regarding the Government's use of its FISA Section 702 authorities, including a summary of all compliance incidents. To date, NSD and ODNI have submitted thirteen Section 702 semiannual reports to Congress. The FISC is provided with a copy of each of these reports. The semiannual reports required by Section 707(b)(1) include a description of every Section 702 compliance incident that was reported during the time period covered by the semiannual report.

(U) In addition to the Section 702 semiannual report required by Section 707(b)(1), Section 702(l) of FISA requires a semiannual joint assessment of Section 702 acquisitions by the Attorney General and the Director of National Intelligence (DNI). To date, NSD and ODNI have submitted twelve such assessments to Congress. The FISC is provided with a copy of each of these assessments. The Joint Assessments provide Congress with the Attorney General and DNI's assessment as to whether the agencies have continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort to comply with the requirements of Section 702. These assessments focus on compliance incidents that impact United States person information, trends in compliance incidents, or other matters that warrant additional discussion. To date, the joint oversight team believes that there have been no intentional attempts to circumvent or violate the Act, the targeting or minimization procedures, or the Attorney General's Acquisition Guidelines.

F. (U) Additional Oversight

(U) In addition to the above, NSD and ODNI conduct ad hoc reviews related to newly developed or modified Section 702-related systems that an agency may use to acquire, retain, or disseminate Section 702 information. NSD, ODNI, NSA, CIA, and FBI also have regular calls and meet as a group approximately quarterly (in addition to ad hoc calls and meetings on specific topics as needed) to discuss Section 702-related issues. Finally, NSD conducts Section 702-related training during its reviews at the individual FBI field offices.

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