

**SECRET//NOFORN**

OGCU 13 March

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**OGC UNIVERSITY TRAINING MODULE #6:**

E.O. 12333 §2.5 COLLECTION AUTHORITY - Student Handout

**Executive Order E.O. 12333 (Section 2.5 Authority)**

(U//~~AIHO~~) Preface The National Security Act of 1947 and E.O. 12333 provide the CIA with its basic authorities for the collection of foreign intelligence and counterintelligence. These authorities must be exercised in a manner consistent with the constitutional protections and other rights afforded to US persons, however, including US persons overseas. Where national security needs dictate and there is probable cause that an individual is acting as an agent of a foreign power, the President may assert his constitutional authority over the conduct of defense and foreign affairs to authorize intelligence collection against a US person overseas. The President has delegated this authority to the Attorney General in Section 2.5 of E.O. 12333. As a result, CIA may pursue [redacted] intelligence collection techniques, [redacted] against a US person abroad once CIA both establishes that there is a reasonable belief that the US person is an agent of a foreign power and obtains Attorney General approval. Section 2.5 provides:

(b)(3) NatSecAct

(b)(3) NatSecAct

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. Electronic surveillance, as defined in the Foreign

Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

(U//AIUO) Note that the Foreign Intelligence Surveillance Act of 1978 (FISA) and the authorities and procedures provided therein, apply to the collection of foreign intelligence and counterintelligence within the United States. Therefore, notwithstanding the authority provided in Section 2.5 for the Attorney General to approve the use of any collection technique "within the United States" as well as against a US person abroad, CIA adheres to the requirements of the FISA [redacted] as otherwise permitted, within the United States. Note also that under Section 2.4 of EO 12333 CIA itself does not actively collect any collection pursuant to FISA in the United States. [redacted]

(b)(3) NatSecAct

(b)(3) NatSecAct

(U) Exercising Section 2.5 Authority

(S) CIA regulation HR 7-1 establishes procedures for implementation generally of CIA authorities; the accompanying annexes constitute the Attorney General-approved procedures for implementation of those authorities granted in Executive Order 12333. As provided in the Attorney General-approved procedures of HR 7-1, Annex A specific Attorney General approval is required for all collection techniques that qualify as [redacted] and are conducted pursuant to Section 2.5 authority.

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(b)(3) NatSecAct

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[redacted] consists of electronic surveillance, monitoring, unconsented physical searches [redacted]

[redacted] (HR 7-1, Annex A, Section V(D)) [redacted]

[redacted]

(b)(1)

(b)(3) NatSecAct

[redacted]-against US persons abroad without securing separate Attorney General approval, in accordance with CIA's basic authorities and as provided in HR 7-1, Annex A.

(b)(1)  
(b)(3) NatSecAct

A. Electronic Surveillance. HR 7-1 defines electronic surveillance as the acquisition of a non-public communication by electronic means without the

consent of any party to the communication or, in the case of a non-electronic communication, without the consent of a person who is visibly present at the place of communication. Note that this definition

[Redacted]

(b)(1)  
(b)(3) NatSecAct

B. Monitoring.

[Redacted]

[Redacted]

(b)(1)  
(b)(3) NatSecAct

C. Unconsented Physical Searches. HR 7-1 defines unconsented physical searches as the search or seizure of a person or property without the consent of an individual authorized to grant consent,

[Redacted]

[Redacted]

(b)(1)  
(b)(3) NatSecAct

D. Opening of Mail not in United States Postal Channels.

[Redacted]

[Redacted]

(b)(1)  
(b)(3) NatSecAct

[Refer to the separate discussion of [Redacted] in your student materials for a more thorough explanation of each of the above categories.]

(b)(1)  
(b)(3) NatSecAct

**(S) Requirements.** Pursuant to Section 2.5, the Attorney General may approve the use [Redacted] against a US person abroad where the Attorney General determines that there is probable cause to believe the target of the collection is a foreign power or an agent

(b)(1)  
(b)(3) NatSecAct

of a foreign power. As set forth in the Attorney General-approved procedures of Annex A (HR 7-1, Annex A(V) (D) (2)), CIA may seek the Attorney General's approval under Section 2.5 where:

- (i) The facts & circumstances indicate that the target of the surveillance is reasonably believed to be an agent of a foreign power;
- (ii) The information sought is necessary and significant foreign intelligence or counterintelligence
- (iii) The purpose of the surveillance is to obtain such intelligence; and
- (iv) The information cannot reasonably be acquired by [REDACTED]

[REDACTED] described in HR 7-1, Annex A)

(b)(1)

(b)(3) NatSecAct

(8) It is important to note that HR 7-1 defines "foreign power" and "agent of a foreign power" [REDACTED]

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(b)(3) NatSecAct

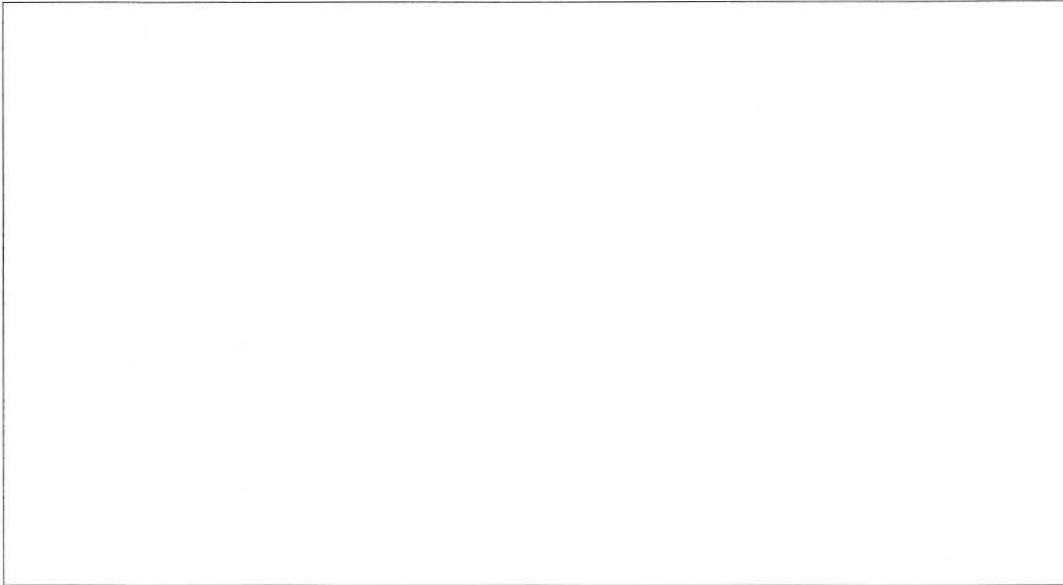
[REDACTED] as any entity owned or controlled by a foreign power or any person who:

- (i) acting for or on behalf of a foreign power, engages in, conspires to engage in or knowingly aids clandestine intelligence activities, sabotage, or international terrorist activities;
- (ii) serves as an officer or employee of a foreign power, [REDACTED]

(b)(1)

- (iii) has had access to US classified material and who acts in collaboration with an intelligence or security service or foreign power or acquires access to classified information under circumstances that indicate contact with a foreign power for purposes of transmitting the information in an unauthorized manner; or
- (iv) otherwise unlawfully acts for or pursuant to the direction of a foreign power.

(b)(3) NatSecAct



(b)(1)  
(b)(3) NatSecAct

**(U//~~ATUO~~) Request for Approval.** Any office wishing to pursue [redacted] against a US person overseas must contact [redacted] to initiate a request. Working with the DoJ/OIPR, [redacted] prepares a written request from the DCI for Attorney General approval. DoJ/OIPR is then responsible for preparing and processing the necessary Attorney General letter to approve the request.

(b)(3) NatSecAct  
(b)(3) CIAAct  
(b)(3) CIAAct

**(S) Emergencies.** The Attorney General also has authorized the CIA to use [redacted] in certain emergency situations without seeking prior Attorney General approval. As set forth in HR 7-1, Annex A, (IV) (E), CIA may pursue special collection against a US person overseas without prior Attorney General approval where:

(b)(1)  
(b)(3) NatSecAct

- i) a person's life or physical safety is reasonably believed to be in imminent danger and the information to be collected concerning US persons is relevant to the danger or its prevention, reduction, or elimination, if the authority who must normally approve such activities is notified as soon as possible; or
- ii) the time required to secure Attorney General approval would result in failure or significant delay in obtaining significant intelligence, so long as an official who

must normally approve such techniques is advised as soon as possible, and the facts and circumstances nevertheless indicate that the US person is an agent of a foreign power; the intelligence sought is significant; and the technique is not directed at an individual within the US.

Note, however, that the Attorney General must be notified of the exercise of this emergency authority as soon as possible, [REDACTED]

[REDACTED] (b)(1)  
[REDACTED] As a practical matter, this emergency authority (b)(3) NatSecAct is rarely used.

**(S) Retention/Dissemination.** In accordance with the Attorney General-approved procedures of Annex A, foreign intelligence and counterintelligence information concerning a US person abroad and appropriately collected pursuant to Section 2.5, as a general rule, may be retained and disseminated within CIA and to authorized recipients outside the CIA for official government purposes (HR 7-1, Annex A(VI)(B)). The identity of the US person and any personally identifiable information must be deleted, however, unless the identity of the US person is necessary to understand or assess the intelligence information. For a more complete discussion of retention and dissemination authorities, see the handout on this topic included in your Module 1 materials.

**(S) Analytical Framework for Seeking [REDACTED] Authority.** (b)(1)  
(b)(3) NatSecAct

- 1) *Is the activity a collection activity targeted at a US person overseas? A US person is defined as a US citizen, an alien known by CIA to be a permanent resident alien, an unincorporated association substantially composed of US citizens or permanent resident aliens, or a corporation incorporated in the US—except for a corporation directed and controlled by a foreign government. (See HR 7-1, Annex A, Section V(A)).*

[See US v. Usama Bin Laden, 126 F. Supp. 2d. 264, 278-281 (S.D.N.Y. 2000) ("Wadih El Hage case"), holding that collection directed at a US person and therefore requiring a warrant or otherwise lawful authorization includes any

search of a residence or surveillance of phones where the US person is "not an unanticipated user" of the residence or phones targeted.

**Yes:** CIA relies upon [redacted] authority only when (b)(1) engaging in foreign intelligence and counterintelligence (b)(3) NatSecAct collection directed at a US person that is overseas.

[redacted]

(b)(1)  
(b)(3) NatSecAct

CAVEAT: A person or organization outside the US may be presumed not to be a US person, unless specific information to the contrary is obtained. (HR 7-1, Annex A, Section V(A)).

2) Does the collection activity [redacted] as provided by HR 7-1, Annex A, Section V(D) [redacted]?

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(b)(3) NatSecAct

**Yes:** [redacted] electronic surveillance, monitoring, unconsented physical searches, [redacted]

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(b)(3) NatSecAct

(b)(1)  
(b)(3) NatSecAct

(b)(1)  
(b)(3) NatSecAct

[redacted]

(b)(1)  
(b)(3) NatSecAct

(b)(1)  
(b)(3) NatSecAct

3) In accordance with the criteria for approval established by the Attorney General [redacted]

(b)(1)  
(b)(3) NatSecAct

(b)(1) [redacted] (See HR 7-1, Annex A, Section V(D) (2)), do  
(b)(3) NatSecAct the facts and circumstances indicate that the target  
is reasonably believed to be an agent of a foreign  
power?

**Yes:** An agent of a foreign power is either an entity owned or controlled by a foreign power, or a person that (1) engages, conspires or aids in clandestine intelligence activities, sabotage, or international terrorist activities on behalf of a foreign power; (2) serves as an officer, employee or representative of a foreign power; (3) acts in collaboration with a foreign intelligence service, having had access to information classified by the US; or (4) acquires access to classified information under circumstances that indicate contact with a foreign power and an intent to transmit such information in an unauthorized manner. (See HR 7-1, Annex C).

(b)(1) **No:** [redacted] authority may be exercised only where  
(b)(3) NatSecAct there is a reasonable belief that the US person targeted is acting as an agent of a foreign power.

[redacted]

b)(1)  
b)(3) NatSecAct

4) In accordance with the criteria for approval established by the Attorney General (see HR 7-1, Annex A, Section V(D) (2)), is the information sought necessary and significant foreign intelligence or counterintelligence and is the purpose of the surveillance to obtain such intelligence?

**Yes:** Foreign intelligence refers to information relating to the capabilities, intentions and activities of foreign powers, organizations, or persons, [redacted]

[redacted]

b)(1)  
b)(3) NatSecAct



[Redacted]

(b)(1)  
(b)(3) NatSecAct

**No:** CIA activities, including those overseas, must be related to CIA's responsibilities and authorities for the collection of foreign intelligence and counterintelligence information as provided in the National Security Act of 1947 and E.O. 12333.

5) *In accordance with the criteria for approval established by the Attorney General (see HR 7-1, Annex A, Section V(D)(2), is it clear that the information sought cannot reasonably be acquired using basic*

[Redacted]

(b)(1)  
(b)(3) NatSecAct

**Yes:** HR 7-1, Annex A, Sections B & C provide a comprehensive description of the types of activities

[Redacted]

(b)(1)  
(b)(3) NatSecAct

The approval of the Attorney General pursuant to [Redacted] may be sought

[Redacted]

(b)(1)  
(b)(3) NatSecAct

[Redacted]

**No:** E.O. 12333 mandates that the Intelligence Community use the least intrusive technique feasible when engaging in collection within the United States or against a US person abroad. (E.O. 12333, Section 2.4).

(b)(1)  
(b)(3) NatSecAct

[Redacted]