Actual Changes in Department of Justice Rule

Comparing Web Postings on 2015/09/14 and 2016/04/30

9-90.010 - National Security

A. Introduction and Scope.

Protecting our national security is the Department's top priority. National security encompasses the national defense, foreign intelligence and counterintelligence, international and internal security, and foreign relations. This includes countering terrorism; combating espionage and economic espionage conducted for the benefit of any foreign government, foreign instrumentality, or foreign agent; enforcing export controls and sanctions; and disrupting cyber threats that are perpetrated by nation states, terrorists, or their agents or proxies.

When national security issues arise during a criminal prosecution, they must be resolved through careful coordination by the Department of Justice (Department) with high level officials from the intelligence, military and foreign affairs communities. In addition, the Attorney General, or the Attorney General's designee, has certain statutory authority and obligations related to national security prosecutions. That authority and those obligations may be properly exercised and met only with appropriate coordination with within the Department by the respective United States Attorneys' Offices (USAOs). A list of all prior approval, consultation and notification requirements related to national security can be found in USAM 9-90.020, below. The Counterintelligence and Export Control Section (CES) of the National Security Division has supervisory authority over all offenses in this chapter.

9-90.020 - National Security Matters—Prior Approval, Consultation, and Notification Requirements

This chapter applies to national security matters other than counterterrorism matters; counterterrorism matters are covered principally by USAM 9-2.136 et seq. In addition, this chapter does not apply when a matter's sole nexus to national security is foreign relations (e.g., international extradition; indictment of a high ranking foreign official for a non national security crime; and other treaty-related issues). Coordination of such matters will be handled by the Criminal Division, Office of International Affairs (OIA). See USAM 9-2-400 for circumstances requiring prior consultation with or approval from OIA. Formatted Formatted: Line spacing: At least 16.8 pt

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<u>Prior approval, consultation</u> and notification requirements related to national security can be found in USAM 9-90.020, below.

B. Authority to Conduct Prosecutions Relating to the National Security.-

A. The enforcement of all criminal laws affecting, involving or relating to the national security, and the responsibility for prosecuting criminal offenses, such as conspiracy, perjury and false statements, arising out of offenses related to national security, is assigned to the Assistant Attorney General (AAG) of the National Security Division. <u>Where a matter affects the national security</u>, regardless of the specific statute(s) implicated, prosecutions shall be instituted and conducted under the supervision of the Assistant Attorney General, National Security Division, or higher authority. 28 C.F.R. § 0.72,

All prosecutions affecting, involving or relating to the national security shall be conducted, handled, or supervised by the AAG, National Security Division, or higher authority. 28 C.F.R. § 0.61. The <u>Counterintelligence and Export Control Section (CES)</u> of the National Security Division, under the supervision of the AAG or a higher authority, conducts, handles, and supervises prosecutions affecting, involving or relating to the national security.

Prosecution within the scope of a case affecting, involving, or relating to the national security shall not be instituted without the express authorization of the National Security Division or higher authority. The National Security Division shall be consulted before this chapter an arrest is made, a search warrant is obtained, a grand jury investigation is commenced, immunity is offered, an indictment is presented, an information filed, or a civil injunctive action filed, a prosecution is declined, a count is dismissed, a sentencing commitment or other disposition is made, or an adverse ruling or decision is appealed in cases affecting, involving, or related to the national security as defined in this section.

[update March 2016]

<u>9-90.020 - National Security Matters—Prior Approval, Consultation, and Notification Requirements</u>

<u>A.</u> What Constitutes a Case Affecting, Involving, or Relating to the National Security. <u>1.</u> National Security Statutes

- Criminal provisions affecting, involving, or relating to the national security are;
- 2.U.S.C. § 192 (ContemptsContempt of Congress Related to National Security)
- 8 U.S.C. § 1185<u>n8s(b)</u> (Travel ControlsControl of Citizens)

• 18 U.S.C. § 219 et seq. (Officers and Employees of the United States Acting as Foreign Agents)

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<mark>⊖</mark> _18 U.S.C. § 2381 et2381et seq. (Treason, Sedition and Subversive Activities)		Formatted
⊖22 U.S.C. § 611 et seq. (Foreign Agents Registration)		
₽ 22 U.S.C. § 2778 (Arms Export Control Act)		
↔ 42 U.S.C. § 2274 to 2278, 2284, and other Atomic Energy Violations that Affect National Security		
(Atomic Energy Act)		
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Activities)		
⊖ 50 U.S.C. § 1701 et<u>1701et</u> seq. (International Emergency Economic Powers Act)	/	Formatted
<mark>↔</mark> _50 U.S.C. § 2401 ct<u>2401et</u> seq. (Export Administration Act)	/	Formatted
↔50 U.S.C. App. § 5(b) (Trading With the Enemy Act)		
2. Other Matters that Affect the National Security		
A variety of other Federal statutes may also be used to prevent, disrupt, and prosecute national		
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o a grand jury investigation is commenced,

- o immunity is offered,
- o an indictment is presented,
- o an information is filed,
- o a civil injunctive action is filed,
- a prosecution is declined,
- o <u>a count is dismissed</u>,
- o a plea agreement is filed,
- o a sentencing commitment or other disposition is made,-
- or an adverse ruling or decision is appealed.

In any other prosecution that affects the national security, regardless of the specific statute(s) implicated, or if there is a reasonable question about whether a particular matter affects the national security, the USAO shall consult with CES to discuss how the matter should be treated and whether the above prior approval or consultation requirements should apply. If the USAO is coordinating with another component of Main Justice, the USAO shall consult directly with CES unless the other component of Main Justice has agreed to facilitate this required consultation.

B. Consultation with the CES is also required in all cases in which classified information plays a role in the prosecutive decision, and all cases that require the protections afforded by the Classified Information Procedures Act, 18 U.S.C. app. §§ 1–162, i.e., cases in which classified information may be disclosed during the pretrial, trial andor appellate stagesstage of the litigation.

Before<u>Finally</u>, <u>before</u><u>initiating</u> a prosecution under 2 U.S.C. §-<u>441e</u>, Campaign Contributions by Foreign Nationals, the Registration Unit of the <u>Counterintelligence and Export Control Section</u><u>CES</u><u>(202)</u> 233-0986, <u>shouldshall</u> be consulted.

[cited in USAM 9 2.111; USAM 9 90.010; USAM 9 90.300; USAM 9 90.400; USAM 9-90.500; USAM 9 90.550; USAM 9-90.600; USAM 9-90.610; USAM 9-90.620; USAM 9-90.640; USAM 9-90.700; USAM 9-90.720; <u>Criminal Resource Manual 2049</u>]

[cited in USAM 9-2.111; USAM 9-90.010; USAM 9-90.300; USAM 9-90.400; USAM 9-90.500; USAM 9-90.500; USAM 9-90.610; USAM 9-90.620; USAM 9-90.640; USAM 9-90.700; USAM 9-90.720; Criminal Resource Manual 2049]

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