

WE DIDN'T NEED LONE WOLF PROVISION TO CATCH LONE WOLF

A few weeks ago, I wondered whether Khalid Ali-M Aldawsari, a Saudi citizen arrested in Texas for purchasing the ingredients to build picric acid, would be our first Lone Wolf. Here was a non-US person, seemingly unconnected to any known terrorist organizations; the FBI obviously used his emails to indict him. So would he be the first ever use of the Lone Wolf provision?

Nope. Todd Hinnen, the Acting head of the National Security Division, reveals in his congressional testimony today we still haven't used the provision.

The next expiring provision is the so-called "lone-wolf" definition, contained in section 1801(b)(1)(C) of Title 50. This definition allows us to conduct surveillance and physical search of non-U.S. persons engaged in international terrorism without demonstrating that they are affiliated with a particular international terrorist group.

There are two key points to understand about this provision. First, it applies only to non-U.S. persons (not to American citizens or green-card holders), see 50 U.S.C. § 1801(b)(1)(C), and only when they engage or prepare to engage in "international terrorism." See 50 U.S.C. § 1801(c). In practice, the Government must know a great deal about the target, including the target's purpose and plans for terrorist activity (in order to satisfy the definition of "international terrorism"), but need not establish probable cause to believe the target is engaging in those activities for or on behalf of a foreign power..

Second, although we have not used this

authority to date, it is designed to fill an important gap in our collection capabilities by allowing us to collect on an individual foreign terrorist who is inspired by – but not a member of – a terrorist group. For example, it might allow surveillance when an individual acts based upon international terrorist recruitment and training on the internet without establishing a connection to any terrorist group. It might also be used when a member of an international terrorist group, perhaps dispatched to the United States to form an operational cell, breaks with the group but nonetheless continues to plot or prepare for acts of international terrorism. If such cases arise, which seems increasingly likely given the trend toward independent extremist actors who “self-radicalize,” we might have difficulty obtaining FISA collection authority without the lone-wolf provision. [my emphasis]

Fine. Then we can give up the charade that we still need this provision? Obviously it had gotten easy enough to get electronic communications we don't need this on the books.