



U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

November 2, 2001

**MEMORANDUM FOR THE ATTORNEY GENERAL**

From: John C. Yoo  
Deputy Assistant Attorney General

b1, b3, b5

b1, b3, b5

b1, b3, b5

~~TOP SECRET~~<sup>b1, b3</sup> /SI/GRCON/NOFORN

OLC 001

**Pages 2-6**  
**Withheld in Full**

~~TOP SECRET~~<sup>b1, b3</sup> /SI/ ORCON/NOFORN  
b1, b3, b5

b1, b3, b5

FISA only provides a safe harbor  
for electronic surveillance, and cannot restrict the President's ability to engage in warrantless searches  
that protect the national security.

b1, b3, b5

**Page 8**

**Withheld in Full**

~~TOP SECRET~~ b1, b3 ~~NOFORN~~

FISA purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence.

b1, b3, b5

Such a reading of FISA would be an unconstitutional infringement on the President's Article II authorities.

b1, b3, b5

b1, b3, b5

**Pages 10-11**  
**Withheld in Full**

~~TOP SECRET~~ b1, b3 ~~TOP SECRET~~ b1, b3, b5

Thus, unless Congress made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area - which it has not - then the statute must be construed to avoid such a reading

b1, b3, b5

b1, b3, b5

**Pages 13-16**  
**Withheld in Full**



~~TOP SECRET~~ b1, b3 ~~SI/ORG/NOFORN~~

b1, b3, b5

we do not believe that Congress may restrict the President's inherent constitutional powers, which allow him to gather intelligence necessary to defend the nation from direct attack.

intelligence gathering in direct support of military operations does not trigger constitutional rights against illegal searches and seizures.

b1, b3, b5

**Page 18**  
**Withheld in Full**

**OLC 010**

~~TOP SECRET~~ b1, b3 ~~SI/ORCON/NOFORN~~  
b1, b3, b5

b1, b3, b5

b1, b3, b5

A warrantless search can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

b1, b3, b5

**Page 20**  
**Withheld in Full**

~~TOP SECRET~~ b1, b3 ~~NOFORN~~

b1, b3, b5

...governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 453 U.S. 280, 307 (1981).

b1, b3, b5

b1, b3, b5

**Pages 22-24**  
**Withheld in Full**