

Report of the Director of the Administrative Office of the U.S. Courts on Activities of the Foreign Intelligence Surveillance Courts for 2016

Introduction

Under [50 U.S.C. § 1873\(a\)\(2\)](#), enacted as part of the USA FREEDOM Act of 2015 (Pub. L. No. 114-23), the Director of the Administrative Office of the United States Courts (AO) is required to publish statistical information on certain activities of the Foreign Intelligence Surveillance Court (FISC) and Foreign Intelligence Surveillance Court of Review (collectively referred to as the FISA courts) as detailed in [50 U.S.C. § 1873\(a\)\(1\)](#). This includes the number of applications or certifications submitted to the FISC and whether those requests were granted, modified, or denied. It also includes information on amicus curiae appointments by the FISA courts. This is the Director's report for calendar year 2016, and is the first such report to cover a full year.

Summary of Findings

The FISC disclosed that it received 1,752 applications in 2016. After consideration by the court, 1,378 orders were granted, 339 orders were modified, 26 orders were denied in part, and 9 applications were denied in full.

After completing the declassification review specified in 50 U.S.C. § 1873 (a)(1), the U.S. Department of Justice advised the AO that the number of certifications submitted under [50 U.S.C. § 1881a](#) is classified for national security reasons and so is not included in these totals. One appointment of an individual to serve as amicus curiae was made by the FISA courts during this period.

When making comparisons with the 2015 report, readers should note that Congress enacted the USA FREEDOM Act of 2015 on June 2, 2015, and the 2015 report covered only the period from June 8, 2015 (the beginning of the first full docket week after the effective date of the USA FREEDOM Act) through December 31, 2015, whereas this report covers the entire calendar year of 2016. Furthermore, as discussed below, the current report reflects an adjustment to the categorization of certain case dispositions.

Explanation of Selected Terms

More detailed statistics appear in the table below. An explanation of selected terms is provided as a reference to help readers understand what is included and excluded in the stated totals.

Applications or Certifications

The reported numbers include:

- (1) applications or certifications that were filed in signed, final form pursuant to Rule 9(b) of the FISC Rules of Procedure; and

(2) proposed applications or certifications (submitted pursuant to Rule 9(a) of the FISC Rules of Procedure) for which the government decided not to submit a corresponding signed, final application or certification pursuant to Rule 9(b) after being advised that the Court, based on its assessment of the proposed application or certification, would not grant the application or certification as proposed by the government.

The reported numbers do not include motions or other requests for relief made after the Court acted on the application or certification in that docket.

Orders Granted

The reported numbers include orders granted without substantive modifications to the orders proposed by the government. They do not include any action taken by the Court in response to motions or other requests for relief made after the Court acted on the application or certification in a docket.

Orders Modified

The reported numbers include:

- (1) any substantive modifications to proposed orders that accompanied a signed, final application or certification submitted by the government pursuant to Rule 9(b), including when such modifications were effected through a supplemental order issued by the Court; and
- (2) any substantive modifications to proposed orders that accompanied proposed applications or certifications submitted by the government pursuant to Rule 9(a) when such modifications resulted from the Court's assessment of such a submission, including when such modifications were subsequently reflected in a proposed order that accompanied a signed, final application or certification submitted by the government pursuant to Rule 9(b).

The following Court actions are among those that would be regarded as substantive modifications to an order:

- (1) imposing a new reporting requirement or modifying one proposed by the government;
- (2) changing the description or specification of a targeted person, of a facility to be subjected to electronic surveillance or of property to be searched;
- (3) modifying the minimization procedures proposed by the government; or
- (4) shortening the duration of some or all of the authorities requested.

Unlike the Director's 2015 report, the numbers of modification in the table below *do not* include dispositions in which the Court granted in part and denied in part the authorizations requested by the government by approving some targets, some facilities, places, premises, property or specific selection

terms, and/or some forms of collection but not others. As discussed below, these modifications are now reported separately as partial denials of the relief sought in the application of certification.

The reported numbers of orders modified do not include:

- (1) any actions taken by the Court in response to motions or other requests for relief made after the Court acted on the application or certification in that docket; or
- (2) any modifications made by the government to an application or certification that it had submitted pursuant to Rule 9(a) or Rule 9(b) – as opposed to modifications to the proposed orders submitted therewith.

In some instances, the Court examination resulted in the government making material changes to applications and certifications; for example, proffering additional facts to support a required judicial finding of probable cause or to address minimization concerns. Consistent with the statutory mandate in 50 U.S.C. § 1873(a), however, the number reported in this category includes only cases in which there were substantive modifications to the government’s proposed orders.

Orders Denied in Part

As noted above, for the first time in this report, partial denials of the relief sought by the government are captured separately under the heading “Orders Denied in Part.” These are dispositions in which the Court granted in part and denied in part the authorizations requested by the government by approving some targets, some facilities, places, premises, property or specific selection terms, and/or some forms of collection, but not others. In the report for 2015, these partial denials were included in the reported numbers of “Orders Modified.” This more detailed accounting most accurately reflects the disposition of these matters, and they will be reported in this manner going forward.

Applications or Certifications Denied

The reported numbers include:

- (1) any cases in which the Court denied in its entirety a final, signed application or certification submitted by the government pursuant to Rule 9(b);
- (2) any cases in which the government withdrew a final, signed application or certification it had submitted pursuant to Rule 9(b) after being advised that the Court would not grant the application or certification as submitted by the government; and
- (3) any cases in which the government decided not to submit a final, signed application or certification pursuant to Rule 9(b) after being advised that the Court, based on its assessment of the corresponding proposed application or certification submitted pursuant to Rule 9(a), would not grant the application or certification as proposed by the government.

Table 1

In accordance with the reporting requirements specified in 50 U.S.C. § 1873(a)(1), the statistics in this table are itemized by section of the Statute. Some of the statistics reported herein differ from those in comparable reports prepared by the U.S. Department of Justice (DOJ) and the Director of National Intelligence (DNI) because those agencies track and tabulate actions taken only with respect to final applications and certifications filed pursuant to Rule 9(b).

Section	Applications or Certifications	Orders Granted	Orders Modified	Orders Denied in Part	Applications or Certifications Denied
1805 only	105	61	39	5	0
1824 only	42	28	11	3	0
1805 and 1824 ¹	1,338	1,052	260	18	8
1842	60	50	10	0	0
1861	125	108	16	0	1
1881a	[redacted] ²	0	0	0	0
1881b	0	0	0	0	0
1881c	82	79	3	0	0

¹ Requests for combined authority to conduct electronic surveillance and physical searches under 50 U.S.C. § 1805 and § 1824, respectively, are included in this row and are not separately reflected in the rows addressing requests for authority to conduct electronic surveillance (Section 1805) and physical search (Section 1824) above.

² The government submitted this number of certification(s) during calendar year 2016 but the Court did not take action on any such certification(s) within the calendar year. After completing the declassification review specified in 50 U.S.C. § 1873 (a)(1), the U.S. Department of Justice has advised the AO that this number is currently classified for national security reasons.

Amicus Curiae

[50 U.S.C. § 1803\(i\)\(2\)](#) authorizes the FISA courts to appoint individuals to serve as amicus curiae. Under 50 U.S.C. § 1803(i)(2)(A), a FISA court must appoint an individual to serve as amicus curiae to assist the court in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate. Furthermore, a FISA court may appoint an individual or organization to serve as amicus curiae in any instance as such court deems appropriate or, upon motion, permit an individual or organization leave to file an amicus curiae brief. 50 U.S.C. § 1803(i)(2)(B).

During the reporting period, on one occasion an individual was appointed to serve as amicus curiae under 50 U.S.C. § 1803(i). The name of the individual appointed to serve as amicus curiae is Marc Zwilling. No findings were made in 2016, pursuant to 50 U.S.C. § 1803(i)(2)(A), that an amicus curiae appointment was not appropriate.