



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

April 25, 2018

Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I herewith transmit the annual report for 2017 regarding the activities of the Foreign Intelligence Surveillance Courts as required in 50 U.S.C. § 1873. Enclosed is a copy of the version of the report that we are making available on an Internet Web site, pursuant to 50 U.S.C. § 1873(a)(2). We are separately providing to you a classified version of the report.

The report indicates that in calendar year 2017 the Foreign Intelligence Surveillance Court denied 26 applications in full and 50 applications in part. The Court modified the orders sought in an additional 391 applications and granted the orders sought without modifications for 1,147 applications. No amicus curiae were appointed during the reporting period and no findings were made under 50 U.S.C. § 1803(i)(2)(A). The report addresses three matters in which the Court advised the government that it was considering appointment of an amicus curiae.

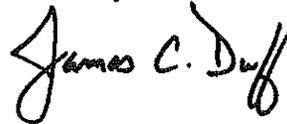
The Executive Branch has conducted the declassification review specified in 50 U.S.C. § 1873(a)(1). The Department of Justice advised us that one figure in the report is classified at this time. We are not reporting this figure in the public version of the report, but we included it in the classified version separately provided to you.

Honorable Bob Goodlatte

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If we may be of further assistance to you in this or any other matter, please contact me or our Office of Legislative Affairs at (202) 502-1700.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive style with a large, stylized initial "J".

James C. Duff
Director

Enclosure

cc: Honorable Jerrold Nadler

Identical letter sent to: Honorable Richard Burr
Honorable Charles Grassley
Honorable Devin Nunes

Report of the Director of the Administrative Office of the U.S. Courts on Activities of the Foreign Intelligence Surveillance Courts for 2017

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 2017.

Summary of Findings

The FISC disclosed that it received 1,614 applications in 2017. After consideration by the court, 1,147 orders were granted, 391 orders were modified, 50 orders were denied in part, and 26 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 modified under [50 U.S.C. § 1881a](#) is classified for national security reasons and so is not included in these totals.

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.

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 reported separately as partial denials of the relief sought in the application or 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, consistent with the Director’s 2016 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.

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 | 104 | 60 | 36 | 4 | 4 |
| 1824 only | 33 | 20 | 9 | 2 | 2 |
| 1805 and 1824 [†] | 1,235 | 868 | 308 | 41 | 18 |
| 1842 | 34 | 19 | 13 | 1 | 1 |
| 1861 | 118 | 92 | 23 | 2 | 1 |
| 1881a | 0 | 0 | █ [‡] | 0 | 0 |
| 1881b | 0 | 0 | 0 | 0 | 0 |
| 1881c | 90 | 88 | 2 | 0 | 0 |

[†] 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.

[‡] This number reflects certification(s) submitted during calendar year 2016 that were decided in 2017. No additional certifications were submitted during 2017. 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, no individual was appointed to serve as amicus curiae by the FISA courts. No findings were made in 2017, pursuant to 50 U.S.C. § 1803(i)(2)(A), that an amicus curiae appointment was not appropriate. There were three matters in which the Court advised the government that it was considering appointment of an amicus curiae to address a novel or significant question of law raised in proposed applications, but the government ultimately did not proceed with the proposed applications at issue, or modified the final applications such that they did not present a novel or significant question of law, thereby obviating a requirement for consideration as to the appropriateness of appointment of amicus. These matters are reflected in the table above as, respectively, a modification to a proposed order, an application denied in full, and an application denied

in part. This is the first report including information about such occurrences. A similarly small number of such events occurred during prior reporting periods but were not discussed in the reports for those years.