

## **Report of the Director of the Administrative Office of the U.S. Courts on activities of the Foreign Intelligence Surveillance Courts for 2015**

### **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 court and whether those requests were granted, modified, or denied. It also includes information on amicus curiae appointments by the FISA courts.

Because Congress enacted the USA FREEDOM Act of 2015 on June 2, 2015, this report covers 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. In future years, each report will include data for the entire calendar year.

### **Summary of Findings**

From June 8, 2015, to December 31, 2015, the FISC disclosed that it received 1,010 applications. After consideration by the court, 836 orders were granted, 169 orders were modified, and 5 applications were denied. 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 the number of certifications submitted and the number of orders modified under [50 U.S.C. § 1881a](#) are classified for national security reasons and so are not included in these totals. Four appointments of individuals to serve as amicus curiae were made by the FISA courts during this period.

### **Explanation of Selected Terms**

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

### ***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).

***Substantive modifications*** include, but are not limited to, those in which the Court granted in part the authorizations requested by the government (e.g., by approving some targets or forms of collection, but not others).

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. Statistics previously reported by the Court to Congress relating to the prevalence of modifications to matters submitted to the Court have included all matters that “involved substantive changes to the information provided by the government or to the authorities granted as a result of Court inquiry or action.” See, e.g., Letter from Hon. Reggie B. Walton to Patrick Leahy, October 11, 2013 (available online at [www.fisc.uscourts.gov/sites/default/files/Correspondence%20Leahy-11-2013.pdf](http://www.fisc.uscourts.gov/sites/default/files/Correspondence%20Leahy-11-2013.pdf)). In some instances, Court examination resulted in the government making material changes to

applications and certifications; for example, to proffer 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 Court includes here only cases in which there were substantive modifications to the government’s proposed orders.

**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.

Section	Applications or Certifications	Orders Granted	Orders Modified	Applications or Certifications Denied
<a href="#">1805</a> only	80	57	23	0
<a href="#">1824</a> only	23	17	6	0
1805 and 1824 <sup>1</sup>	754	623	126	5
<a href="#">1842</a>	40	33	7	0
<a href="#">1861</a>	68	61	7	0
<a href="#">1881a</a>	See note below <sup>2</sup>	0	See note below <sup>2</sup>	0
<a href="#">1881b</a>	0	0	0	0
<a href="#">1881c</a>	45	45	0	0

<sup>1</sup> 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.

<sup>2</sup> 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 four occasions individuals were appointed to serve as amicus curiae under 50 U.S.C. § 1803(i). The names of the three individuals appointed to serve as amicus curiae are as follows: Preston Burton, Kenneth T. Cuccinelli II (with Freedom Works), and Amy Jeffress. All four appointments in 2015 were made pursuant to § 1803(i)(2)(B). Five findings were made that an amicus curiae appointment was not appropriate under 50 U.S.C. § 1803(i)(2)(A) (however, in three of those five instances, the court appointed an amicus curiae under 50 U.S.C. § 1803(i)(2)(B) in the same matter).