Report of the Director of the Administrative Office of the U.S. Courts on Activities of the Foreign Intelligence Surveillance Courts for 2023

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 or the Court) and Foreign Intelligence Surveillance Court of Review (FISCR) (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 2023.

Summary of Findings

The FISC disclosed that it received 363 applications and certifications in 2023. After consideration by the Court, 270 orders were granted, 78 orders were modified, 13 orders were denied in part, and 1 application was denied in full. The FISC did not take final action on one of these applications within the calendar year, as noted below. No appointments of individuals to serve as amici curiae were made by the FISA courts during this period.

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 orders modified 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, properties 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 likewise 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's examination resulted in the government making material changes to applications and certifications, such as, 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 substantive modifications were made to the government's proposed orders.

Orders Denied in Part

As noted above, consistent with the Director's reports since 2016, 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, properties 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 their entirety any final, signed applications or certifications submitted by the government pursuant to Rule 9(b);

(2) any cases in which the government withdrew final, signed applications or certifications it had submitted pursuant to Rule 9(b) after being advised that the Court would not grant the applications or certifications as submitted by the government; and

(3) any cases in which the government decided not to submit final, signed applications or certifications pursuant to Rule 9(b) after being advised that the Court, based on its assessment of the corresponding proposed applications or certifications submitted pursuant to Rule 9(a), would not grant the applications or certifications as proposed by the government.

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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 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	38*	27	6	4	0
1824 only	15	11	4	0	0
1805 and 1824†	276	205	61	9	1
1842	0	0	0	0	0
1861	6	4	2	0	0
1881a	3	0	3	0	0
1881b	0	0	0	0	0
1881c	25	23	2	0	0

* The government submitted this number of applications pursuant to 50 U.S.C. § 1805 in 2023, but one of those applications was pending and did not receive final action within the calendar year.

† 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.

Amicus Curiae

50 U.S.C. § 1803(i)(2) authorizes the FISA courts to appoint individuals to serve as amici 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 its 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 it 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 in which the

court deems this appropriate or, upon motion, may permit an individual or organization leave to file an amicus curiae brief. *See* 50 U.S.C. § 1803(i)(2)(B).

In years when amici are reported pursuant to 50 U.S.C. § 1873(a)(1)(E), each instance in which an individual received an amicus curiae appointment is counted separately, such as when more than one individual was appointed in the same matter or when the same individual was appointed by the FISC and the FISCR at different stages of the same case.

During the 2023 reporting period, no appointments were made of individuals to serve as amici curiae by the FISA courts. No findings were made in 2023, pursuant to 50 U.S.C. § 1803(i)(2)(A), that an amicus curiae appointment was not appropriate.

Consistent with the Director's reports since 2017, this report will also specifically note any instances in which the Court advised the government that it had considered appointment of an amicus curiae to address a novel or significant question of law raised in a proposed application, but the government ultimately did not proceed with the proposed application or modified the final application such that it did not present a novel or significant question of law, thereby obviating a requirement for consideration of the appropriateness of appointment of amicus curiae. There were no such instances in 2023.