UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATIONS OF THE FEDERAL BUREAU OF INVESTIGATION FOR ORDERS REQUIRING THE PRODUCTION OF TANGIBLE THINGS	)	Docket Nos. BR 15-77 15-78

MEMORANDUM OPINION

This matter involves applications by the United States government under Section 501 of the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended, for "business records" orders—orders requiring the production of certain tangible things for investigations to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities. *See* 50 U.S.C. § 1861(a)(1). The factual details of the applications are classified, and not necessary to resolve the issue addressed in this opinion. The question presented is a purely legal question, posed in a somewhat unusual setting.

On October 26, 2001, Congress adopted the USA PATRIOT Act. *See* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No. 107–56, 115 Stat. 272 (2001). Among other things, that act adopted a new framework for applications by the government to this court for orders requiring the production of tangible things—commonly referred to as "business records" orders. *See id.* § 215, 115 Stat. at 287. The new business records provision, which appeared in pertinent part at Section 501 of FISA, was subject to a "sunset" clause, so that the

authority provided under that statute would "cease to have effect" by a certain date. *See id.* § 224(a), 115 Stat. at 295. That date was later twice extended.[1] In 2006, Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act extended the deadline again. *See* USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109–177, § 102(b)(1), 120 Stat. 192, 194-95 (2006). That statute made a number of substantive changes to the business records provision.[2] It also changed the sunset provision to state that, at the deadline, the business records provision would revert to the form it took before the adoption of the USA PATRIOT Act (that is, its form immediately before October 26, 2001).[3] *See id.* After several further renewals, the sunset date was extended to June 1, 2015.[4] For ease of reference, this sunset provision is referred to below as "Section 102(b)(1)."

Congress did not take action to extend the deadline, or otherwise renew the statutory authority, before June 1, 2015. Instead, on June 2, it passed the USA FREEDOM Act, which the

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[1] *See* Extension of Sunset of Certain Provisions of the USA PATRIOT Act, Pub. L. No. 109-160, § 1, 119 Stat. 2957 (2005); Extension of Sunset of Certain Provisions of the USA PATRIOT Act, Pub. L. No. 109-170, § 1, 120 Stat. 3 (2006).

[2] These changes included, among other things, adding new language requiring that each application demonstrate reasonable grounds to believe that the tangible things sought are relevant to an FBI investigation, permitting the recipients of business records orders to challenge their legality, and requiring the Attorney General to adopt minimization procedures. § 106, 120 Stat. at 196-200.

[3] This form of the business records provision, which was enacted in 1998, was more restrictive in some respects than the provision adopted as part of the USA PATRIOT Act. Among other things, it permitted production orders only for particular classes of records (records of a "common carrier, public accommodation facility, physical storage facility, or vehicle rental facility"), which did not include call-detail records maintained by telephone companies. Such orders could issue only upon a showing of "specific and articulable facts giving reason to believe the person to whom the records pertain is a foreign power or an agent of a foreign power." *See* Intelligence Authorization Act for Fiscal Year 1999, Pub. L. No. 105-272, § 602, 112 Stat. 2396, 2410-12 (1998).

[4] *See* Department of Defense Appropriations Act, 2010, Pub. L. No. 111–118, § 1004, 123 Stat. 3409, 3470 (2009); Act of Feb. 27, 2010, Pub. L. No. 111–141, § 1(a), 124 Stat. 37; FISA Sunsets Extension Act of 2011, Pub. L. No. 112–3, § (2)(a), 125 Stat. 4; and PATRIOT Sunsets Extension Act of 2011, Pub. L. No. 112–14, § 2(a), 125 Stat. 216.

president signed the same day. *See* Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015, Pub. L. 114-23. The new statute amended the sunset provision set forth in Section 102(b)(1) by striking "June 1, 2015" and replacing it with "December 15, 2019." *See id.* § 705(a). It also made a variety of other substantive changes to the statutory framework, including provisions concerning the appointment of amicus curiae in certain cases. *See id.* §§ 401-402.

On June 11, 2015, the government filed applications with this court under Section 501, seeking orders requiring specific recipients to produce various records and tangible things. The court's authority to approve the applications, and to issue such orders, depends on whether the USA FREEDOM Act effectively reinstated the authority of the court to issue such orders pursuant to the version of Section 501 that was in effect immediately before June 1, 2015 (as otherwise amended by the USA FREEDOM Act), or whether that authority expired by operation of the June 1 sunset and has not been revived. Before reaching that question, the court must first address the issue of whether it should appoint an amicus curiae to assist it in making its decision.

1. Whether the Court Should Appoint an Amicus Curiae

Section 401 of the USA FREEDOM Act, codified at 50 U.S.C. § 1803(i), provides that the presiding judges of the Foreign Intelligence Surveillance Court (FISC) and the Foreign Intelligence Surveillance Court of Review (FISCR) shall "jointly designate not fewer than 5 individuals to be eligible to serve as amicus curiae." 50 U.S.C. § 1803(i)(1).[5] The act further provides for the appointment of amicus curiae—"consistent with the requirement of subsection

[5] As of this writing, the USA FREEDOM Act is only two weeks old. Although the court has begun the process of identifying potential candidates for eligibility to serve as amicus curiae, no such designations have yet been made.

(c) [that proceedings under FISA 'be conducted as expeditiously as possible'] and any other statutory requirement that the court act expeditiously or within a stated time"—under one of two circumstances. *Id.* § 1803(i)(2).[6]

The first such circumstance is that the court "*shall* appoint" an 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." *Id.* § 1803(i)(2)(A) (emphasis added). The second is that the court "*may* appoint" an amicus curiae "including [sic] to provide technical expertise, in any instance as [the] court deems appropriate or, upon motion, permit an individual or organization leave to file an amicus curiae brief." *Id.* § 1803(i)(2)(B) (emphasis added). The first provision thus *requires* the appointment of amicus curiae under certain circumstances unless the court makes a specific finding to the contrary, and the second provision *permits* such an appointment in the discretion of the court.

The question presented here is a legal question: in essence, whether the "business records" provision of FISA has reverted to the form it took before the adoption of the USA PATRIOT Act in October 2001. That question is solely a matter of statutory interpretation; it presents no issues of fact, or application of facts to law, and requires no particular knowledge or expertise in technological or scientific issues to resolve. The issue is thus whether an amicus curiae should be appointed to assist the court in resolving that specific legal issue.

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[6] The act provides for the designation of amicus curiae to serve for both the FISC and the FISCR. For the sake of convenience, this opinion will refer only to the FISC itself.

The legal question here is undoubtedly "significant" within the meaning of Section 1803(i)(2)(A). If Section 501 no longer provides that the government can apply for or obtain orders requiring the production of a broad range of business records and other tangible things under the statute, that will have a substantial effect on the intelligence-gathering capabilities of the government. It is likely "novel," as well, as the issue has not been addressed by any court (indeed, the USA FREEDOM Act is only two weeks old). The appointment of an amicus curiae would therefore appear to be presumptively required, unless the court specifically finds that such an appointment is "not appropriate."

Because the statute is new, the court is faced for the first time with the question of when it is "not appropriate" to appoint an amicus curiae. There is no obvious precedent on which to draw. Moreover, the court as a whole has not had an opportunity to consider or adopt any rules addressing the designation or appointment of amicus curiae.

The statute provides some limited guidance, in that it clearly contemplates that there will be circumstances where an amicus curiae is unnecessary (that is, "not appropriate") even though an application presents a "novel or significant interpretation of the law." At a minimum, it seems likely that those circumstances would include situations where the court concludes that it does not need the assistance or advice of amicus curiae because the legal question is relatively simple, or is capable of only a single reasonable or rational outcome.[7] In other words, Congress must

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[7] There may be other circumstances, as well, where appointment of an amicus curiae is not appropriate. For example, such an appointment would in most instances result in some degree of additional expense and delay. Whether amicus curiae will be compensated, and at what rates, is not specifically addressed in the statute, but the direct expense (if any) is only a part of the issue; the most significant concern is likely to be delay. Indeed, the statute appears to contemplate that one of the factors the court should consider before appointing amicus curiae is the need to act "expeditiously" in a particular case. 50 U.S.C. § 1803(i)(2). Here, the court does not reach the issue whether the potential expense or delay of appointing an amicus curiae may provide a basis, in whole or in part, for

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have intended that the court need not appoint amicus curiae to point out obvious legal issues or obvious legal conclusions, even if the issue presented was "novel or significant." Accordingly, the court believes that if the appropriate outcome is sufficiently clear, such that no reasonable jurist would reach a different decision, the appointment of an amicus curiae is not required under the statute.[8]

This is such an instance. Although the statutory framework is somewhat tangled, the choice before the court is actually very clear and stark: as described below, it can apply well-established principles of statutory construction and interpret the USA FREEDOM Act in a manner that gives meaning to all of its provisions, or it can ignore those principles and conclude that Congress passed an irrational statute with multiple superfluous parts. Under the circumstances, it does not appear that the assistance of an amicus curiae would materially assist the court in making that decision. The court therefore finds that it is "not appropriate" to appoint an amicus curiae in this matter, within the meaning of 50 U.S.C. § 1803(i)(2)(A). Whether amicus curiae would assist the court in interpreting other provisions of the USA FREEDOM Act, or any other aspect of the statutory framework, is a question for another day.

2. Whether the USA FREEDOM Act Reinstated the "Business Records Order" Provisions of § 501 That Lapsed on June 1, 2015

As of May 31, 2015, Section 102(b)(1) read as follows: "Effective June 1, 2015, the Foreign Intelligence Surveillance Act is amended so that sections 501, 502, and 105(c)(2) read as

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declining to make such an appointment.

[8] That is not to suggest that an amicus curiae would serve no purpose whatsoever, even where the answer to a legal question is clear. As in any case, an amicus curiae might help to develop and refine arguments and to clarify the reasoning of the court. But the question is not whether an amicus curiae would serve *any* function; it is whether such an appointment is "appropriate" under the circumstances.

they read on October 25, 2001." *See supra* p. 2 and note 4. The USA PATRIOT Act was originally enacted on October 26, 2001. Accordingly, when Congress did not act by June 1, 2015, Sections 501, 502, and 105(c)(2) of FISA reverted to their earlier form (that is, their form prior to the adoption of the USA PATRIOT Act).[9] The reversion to the earlier form of the statute was not merely technical. Section 501 as in effect immediately prior to the sunset date (June 1, 2015) was very different from the business records provision of FISA in effect immediately prior to the effective date of the USA PATRIOT Act. *See, e.g.*, *supra* notes 2-3 and accompanying text.[10]

On June 2, 2015, Congress adopted, and the President signed, the USA FREEDOM Act. Section 705(a) of that act amended Section 102(b)(1) by striking "June 1, 2015" and replacing it with "December 15, 2019." Section 705(c) of the act made a further amendment by striking the words "sections 501, 502, and" and replacing them with "title V and section."[11] Thus, the USA FREEDOM Act amended Section 102(b)(1) to read: "Effective December 15, 2019, the Foreign Intelligence Surveillance Act is amended so that title V and section 105(c)(2) read as they read on October 25, 2001."

The issue before the Court is whether (1) the amendments made by the USA FREEDOM Act should be understood to have restored the version of Section 501 that had been in effect

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[9] The general reversion was subject to a savings clause applicable in certain circumstances. *See* § 102(b)(2). Because the Court finds that the USA FREEDOM Act reinstated the lapsed provisions of FISA, it is not necessary to address the scope or effect of the savings clause.

[10] Title V, as in effect on October 25, 2001, also included a Section 503, which set out certain Congressional reporting requirements. *See* Intelligence Authorization Act for Fiscal Year 1999 § 602, 112 Stat. at 2412. Different Congressional reporting requirements appeared in Section 502, codified at 50 U.S.C. § 1862, as in effect immediately prior to June 1, 2015.

[11] As of May 31, 2015, Title V of FISA consisted entirely of Sections 501 and 502. The USA FREEDOM Act includes amendments to Sections 501 and 502, but does not add any new sections to Title V.

immediately prior to June 1, 2015 (subject to modifications made by other provisions of the USA FREEDOM Act) or (2) the version of the business records provision that existed before the adoption of the USA PATRIOT Act remains applicable.[12]

Section 102(b)(1) is a sunset clause—a statutory provision that causes a statute to expire, become ineffective, or undergo modification, as of a certain date.[13] Indeed, Section 102(b)(1) is entitled "SECTIONS 206 AND 215 SUNSET," referring to the sections of the original USA PATRIOT Act that amended Section 105(c)(2) and Title V. Unquestionably, Congress has the power to enact statutes that have sunset clauses, and to extend or revive those statutes under circumstances it deems appropriate. The issue is one of legislative intent. Congress is not required to use any particular words or formula; instead, "generally speaking, 'Congress may revive or extend an act by any form of words which makes clear its intention to do so.'" *In re Grand Jury Subpoenas Duces Tecum*, 78 F.3d 1307, 1312 (8th Cir. 1996) (quoting *Kersten v. United States*, 161 F.2d 337, 338 (10th Cir. 1947)).

As noted, Section 705(a) of the USA FREEDOM Act amended Section 102(b)(1) by striking "June 1, 2015" and replacing it with "December 15, 2019." By itself, that amendment

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[12] Section 102(b)(1), as amended by the USA FREEDOM Act, treats the provisions of Section 105(c)(2) and Title V without differentiation. Similarly, the pre-amendment version of Section 102(b)(1) did not differentiate among Sections 105(c)(2), 501, and 502. In the absence of a compelling reason to think that Congress intended otherwise, the Court's analysis proceeds on the basis that Section 102(b)(1) has the same effect on the Title V provisions as it does on Section 105(c)(2). *See, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (where "operative language" of a statutory provision "applies without differentiation to all three categories of aliens that are its subject," giving "these same words a different meaning for each category would be to invent a statute rather than interpret one"). It therefore is instructive to examine how Section 102(b)(1) interrelates with Section 105(c)(2), as well as Title V.

[13] Sunset clauses may be drafted in a number of ways. For example, Section 224(a) of the original USA PATRIOT Act (later replaced by Section 102(b)(1) provided that certain specified provisions and amendments to prior statutes "shall cease to have effect on December 31, 2005." The Independent Counsel Reauthorization Act of 1987, § 2, Pub. L. No. 100-191, 101 Stat. 1293, 1306 (provision codified at 28 U.S.C. § 599), stated that specified provisions "shall cease to be effective five years after the date of the enactment" of that statute.

clearly suggests that Congress intended to undo the effect of the June 1 sunset—that is, to restore the affected provisions to read as they did immediately before June 1—and for the statute to remain in place until 2019.[14] It is certainly true that Congress might have chosen a more direct way of expressing its intent—for example, by expressly providing that "the version of the statute that was in place immediately before June 1, 2015, is hereby reinstated, with the following amendments." But it did not need to do so. No special form of words is necessary, nor is there any requirement of heightened clarity of expression for reinstating statutes that have lapsed by operation of a sunset clause. Congress could exercise its authority by enacting "any form of words which ma[de] clear its intention to do so." *In re Grand Jury Subpoenas Duces Tecum*, 78 F.3d at 1312 (internal quotation marks omitted).[15]

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[14] It is not necessary to decide whether this amendment had retroactive effect with regard to any actions taken between the sunset on June 1 and the enactment of the USA FREEDOM Act on June 2, and the Court does not reach this issue.

[15] Amending a statute's sunset clause to refer to a termination date in the future, instead of one in the past, is a recognized means by which Congress can reinstate a statute that has lapsed by prior operation of the sunset clause. For example, Section 2 of the Independent Counsel Reauthorization Act of 1987 provided that certain provisions would "cease to be effective five years after the date of [its] enactment." 101 Stat. at 1306. Section 2 of the Independent Counsel Reauthorization Act of 1994, Pub. L. No. 103-270, 108 Stat. 732, 732, amended this provision by striking "1987" and inserting "1994." "In amending the sunset provision, Congress made clear its intention to reenact the 1987 Act. Consequently, . . . the 1987 Act was validly reenacted by Congress in June 1994." *In re Grand Jury Subpoenas Duces Tecum*, 78 F.3d at 1312 (footnote omitted). Similarly, the Export Administration Act (EAA), 50 U.S.C. app. §§ 2401-2420,

> has lapsed . . . periodically because it is a temporary statute with a set expiration date.
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> On many occasions, Congress has *reauthorized the EAA by simply postponing its expiration date, but it does not always do so prior to the Act's termination.* As a result, there have been periods of lapse, ranging in length from a few days to many years, between the statute's episodic expiration and revival.

Micei Int'l v. Dep't of Commerce, 613 F.3d 1147, 1150 (D.C. Cir. 2010) (emphasis added; citations omitted); *see also Electronic Frontier Foundation v. Dep't of Commerce*, 58 F. Supp.3d 1008, 1013-15 (N.D. Cal. 2013) (discussing post-lapse reinstatement of EAA by striking termination date in the past and inserting one in the future), *appeal docketed*, (9th Cir. July 23, 2013). In an unpublished opinion, the United States Court of Appeals for the Ninth Circuit rejected an argument that this form of enactment failed to reinstate the EAA because, after lapse, "there

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Furthermore, if Section 102(b)(1) is interpreted in any other way, it is superfluous, if not nonsensical. Section 102(b)(1) now reads: "Effective December 15, 2019, the Foreign Intelligence Surveillance Act is amended so that title V and section 105(c)(2) read as they read on October 25, 2001." The clear implication of that language is that, now through December 14, 2019, those provisions read *differently* than they did on October 25, 2001, and that, effective December 15, 2019, the language of these provisions will *change back* to how they read on October 25, 2001. As to Sections 105(c)(2), 501, and 502, the only way there can be a difference between the language now in effect and the language that was in effect on October 25, 2001—or that reverting to the October 25, 2001 language on December 15, 2019, can result in any change to the current language—is if the USA FREEDOM Act reinstated the language that had been operative immediately prior to June 1.

Under "one of the most basic interpretive canons, . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotation marks omitted).[16] This canon weighs strongly in favor of the interpretation that Section 705 of the USA FREEDOM Act reinstated Sections 105(c)(2), 501, and 502 to how they read immediately before June 1. The contrary interpretation would render the statutory language that, "*[e]ffective*

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was no statute left to amend." *United States v. Smit*, 899 F.2d 1226 (Table), *available at* 1990 WL 40252, *4 (9th Cir. Apr. 4, 1990). The court rejected that contention as "against the obvious intent of Congress," observing that "[t]he form of words is not material when Congress manifests its will that certain rules shall govern henceforth." *Id.* at *5 (internal quotation marks omitted).

[16] *Accord, e.g.*, *Gustafson v. Alloyed Co., Inc.*, 513 U.S. 561, 574 (1995) (court will avoid an interpretation of a statute that "renders some words altogether redundant"); *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 298 (1956) ("It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.") (internal quotation marks omitted).

December 15, 2019," FISA "*is amended*" so that Section 105(c)(2) and Title V read as they did on October 25, 2001, entirely superfluous with regard to Section 105(c)(2), and nearly so with regard to Title V.[17]

Another "'fundamental canon of statutory construction'" is "'that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)). A court must therefore interpret a statute "'as a symmetrical and coherent regulatory scheme,'" 529 U.S. at 133 (quoting *Gustafson*, 513 U.S. at 569), and "'fit, if possible, all parts into an harmonious whole.'" 529 U.S. at 133 (quoting *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959)).[18]

That canon of construction likewise compels the conclusion that the USA FREEDOM Act reinstated to Section 501 the language in effect immediately before the June 1 sunset. Sections 101 through 107 of that act contain extensive amendments to Section 501 concerning

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[17] As stated in note 10 *supra*, Title V of FISA as in effect on October 25, 2001, included Congressional reporting requirements that appeared in Section 503. Absent further legislation, Section 503 will come back into effect on December 15, 2019, by operation of Section 102(b)(1). By virtue of that future reinstatement of Section 503, Section 102(b)(1) avoids being a total nullity with regard to Title V. There is no apparent reason, however, why Congress would have chosen to delay reinstatement of the Section 503 reporting requirements for four and a half years, if the substantive provisions of Title V now contain their pre-USA PATRIOT Act language, notwithstanding Section 705 of the USA FREEDOM Act. Interpreting Section 705 to have reinstated Sections 501 and 502 to how they read immediately before the June 1 sunset yields a much more sensible result: the pre-USA PATRIOT Act reporting requirements in Section 503 will be reinstated on December 15, 2019, at the same time that the reporting requirements contained in Section 502 (in the form it took immediately before the June 1 sunset date) are slated to expire and the substantive business record provisions are slated to revert to their pre-USA PATRIOT Act language.

[18] *Accord, e.g.*, *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act the most harmonious, comprehensive meaning possible in light of the legislative policy and purpose") (internal quotation marks omitted); *Mastro Plastics Corp.*, 350 U.S. at 298 ("every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each") (internal quotation marks omitted).

the substantive requirements for business records productions and orders.[19] Those amendments unmistakably apply to the language of Section 501 as in effect prior to the June 1 sunset date. Indeed, they are incoherent as applied to the language of Section 501 as it read on October 25, 2001.[20] In order to make sense of that whole set of amendments, and to avoid rendering many of them individually superfluous or unintelligible, Section 705(a) of the USA FREEDOM Act must be read to have reinstated the language of Section 501 that was in effect prior to the June 1 sunset, subject to the amendments made to *that* version of Section 501 by other provisions of the USA FREEDOM Act.

Finally, and for what it is worth, the legislative history confirms that conclusion. On May 13, 2015, the House of Representatives passed H.R. 2048, the bill that became the USA FREEDOM Act. The House Report states that Section 705 of H.R. 2048 would "reauthorize[ ] . . . to December 15, 2019" the USA PATRIOT Act version of Section 501. *See* H.R. Rep. No. 114-109, pt. 1, at 29 (2015). In the days immediately before the June 1 sunset, the Senate was actively deliberating on that bill, but did not pass it until June 2. On June 2, the following colloquy took place between Senators Leahy and Lee:

> Mr. LEAHY. It is unfortunate that we were unable to pass the USA FREEDOM Act before the June 1, 2015, sunset . . . . [I]t is important that we make clear our intent in passing the USA FREEDOM Act this week—albeit a few days after the sunset.

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[19] The effective date of Sections 101 through 103 is postponed by 180 days from the date of enactment, *see* USA FREEDOM Act § 109(a), while Sections 104 through 107 took effect immediately.

[20] *See, e.g.*, USA FREEDOM Act § 101(a) (amending Section 501(b)(2) in a manner that is sensible as applied to that provision as it existed on May 31, 2015, whereas Section 501 did not contain a subsection (b)(2) in the form that it read on October 25, 2001); *id.* § 104(a)(1) (amending Section 501(c)(1) in a manner that is sensible as applied to that provision as it existed on May 31, 2015, whereas Section 501 did not contain a subsection (c)(1) in the form that it read on October 25, 2001). The text of Section 501 as it read on October 25, 2001, appears at 50 U.S.C.A. § 1861 note (West Supp. 2014).

> Could the Senator comment on the intent of the Senate in passing the USA FREEDOM Act after June 1, 2015?
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> Mr. LEE. Although we have gone past the June 1 sunset date by a few days, our intent in passing the USA FREEDOM Act is that the expired provisions be restored in their entirety just as they were on May 31, 2015, except to the extent that they have been amended by the USA FREEDOM Act. Specifically, it is both the intent and the effect of the USA FREEDOM Act that the now-expired provisions of . . . FISA, will, upon enactment of the USA FREEDOM Act, read as those provisions read on May 31, 2015, except insofar as those provisions are modified by the USA FREEDOM Act, and that they will continue in that form until December 15, 2019. Extending the effect of those provisions for 4 years is the reason section 705 is part of the act.

See 161 Cong. Rec. S3439 (daily ed. June 2, 2015).

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For the foregoing reasons, the Court concludes that the USA FREEDOM Act reinstated to Section 501 of FISA the language in effect immediately before the sunset on June 1, 2015, subject to amendments made by other provisions of the same act. Thus, and in simple terms, the FISA "business records" provisions added by the USA PATRIOT Act (as later amended) are in effect, and the court has the authority to grant the applications and issue the requested orders.

It is requested that this Memorandum Opinion be published pursuant to Rule 62(a) of the United States Foreign Intelligence Surveillance Court Rules of Procedure.

ENTERED this 17th day of June, 2015.

/s/ F. Dennis Saylor
F. DENNIS SAYLOR IV
Judge, United States Foreign
Intelligence Surveillance Court