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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

[redacted]

BRIEFING ORDER

On July 15, 2015, the government submitted [redacted] certifications and accompanying targeting and minimization procedures ("the 2015 Certifications") pursuant to section 702 of FISA, codified at 50 U.S.C. § 1881a. The 2015 Certifications reauthorize certifications under section 702 that the Court approved on August 26, 2014 ("the 2014 Certifications"). They also amend the 2014 Certifications, as well as predecessor certifications under section 702, to provide that information acquired pursuant to those certifications shall henceforward be governed by the minimization procedures that accompany the 2015 Certifications.

The government had submitted versions of the 2015 Certifications in draft form on June

15, 2015. After reviewing those drafts, the Court concluded "that this matter is likely to present one or more novel or significant interpretations of the law, which would require the Court to consider appointment of an amicus curiae" under section 103(i)(2). See [redacted] Order issued on July 7, 2015 ("July 7 Order"), at 3. The Court further noted that the 30-day review period specified by section 702(i)(1)(B) would, as a practical matter, foreclose amicus curiae (hereinafter "amicus") participation. Id.

The Court may, however, extend that 30-day review period "as necessary for good cause in a manner consistent with national security." § 702(j)(2). To help the Court decide "whether to extend the time it would have to act on the 2015 Certifications and revised procedures in order to allow for meaningful amicus assistance in reviewing them," the Court ordered the government to "explain in writing whether – and if so, how long – an extension of the time for the Court to review the 2015 Certifications and revised procedures would be consistent with national security." July 7 Order at 4.

On July 14, 2015, the government timely filed its Response to the July 7 Order, advising that "the government assesses that an extension of 60 to 90 days . . . would be consistent with national security." See [redacted], Government's Response to the Court's Order of July 7, 2015, filed on July 14, 2015, at 7.

On July 23, 2015, the Court found that "the need for an extension to allow for [amicus] participation constitutes 'good cause'" for an extension under section 702(j)(2). See [redacted] Order issued on July 23, 2015, at 3. Accordingly, it extended "the period for Court review under section 702(i)(1)(B) for

90 days, such that this review must be completed no later than November 12, 2015." Id.

On August 13, 2015, the Court appointed Amy Jeffress as amicus in this matter pursuant to section 103(i)(2)(B) of the Foreign Intelligence Surveillance Act of 1978, codified at 50 U.S.C. § 1803(i)(2)(B), noting that it anticipated setting a briefing schedule at a later date. See [redacted], Order Appointing An Amicus Curiae, issued on August 13, 2015 ("August 13 Order"), at 4-5. The August 13 Order identified the following issues to be addressed by the amicus:

> Pursuant to section 702(i)(2)(C) and (i)(3)(A)-(B), the Court must assess, among other things: (a) whether the minimization procedures that accompany the 2015 Certifications meet the definition of minimization procedures under 50 U.S.C. § 1801(h) or § 1821(4), as appropriate; and (b) whether those procedures are consistent with the fourth amendment to the Constitution of the United States. The amicus is directed to address whether these requirements are satisfied in view of the provisions of the procedures that apply to:
>
> > (i) queries of information obtained under section 702, particularly insofar as queries may be designed to return information concerning United States persons, see NSA Minimization Procedures at 7, FBI Minimization Procedures at 11-12, and CIA Minimization Procedures at 3-4; and
> >
> > (ii) preservation for litigation purposes of information otherwise required to be destroyed under the minimization procedures, see NSA Minimization Procedures at 8-9, FBI Minimization Procedures at 24-25, and CIA Minimization Procedures at 10-11.

Id.

The August 13 Order further outlined the Court's plan for providing the amicus with access to the relevant materials after confirming that she had received the appropriate clearances and access approvals. Id. at 5. It also gave the government an opportunity to provide a written notice and explanation if it believed this plan was inconsistent with the national security of the

United States. Id. On August 18, 2015, the government notified the Court that it believed the amicus' access to relevant materials was consistent with the national security of the United States, provided she had received appropriate clearances and access approvals. See [redacted] Notice Concerning The Court's Order of August 13, 2015, Appointing An Amicus Curiae, filed on August 18, 2015, at 2. The Court has confirmed that the amicus has the appropriate clearances and access approvals; the amicus has reviewed the relevant materials; and the Court is now prepared to set a briefing schedule.

Accordingly, it is HEREBY ORDERED as follows:

The amicus and the government shall file briefs addressing the aforementioned issues outlined at pages 4-5 of the August 13 Order no later than 2 PM on October 16, 2015. The Court anticipates receiving oral arguments on the same issues from the amicus and the government at 2 PM on October 20, 2015, if, after its review of the briefs, the Court determines that oral arguments would be beneficial.

ENTERED this 16th day of September, 2015, [redacted]

Thomas F. Hogan

THOMAS F. HOGAN
Judge, United States Foreign
Intelligence Surveillance Court