

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

WASHINGTON, D.C.

In Re: Directives [redacted text])
Pursuant to Section 105B of the) No. 08-01
Foreign Intelligence Surveillance Act)
_____)

**THE UNITED STATES' RESPONSE TO PROVIDER'S
MOTION UNDER FISC RULE 62 TO PUBLISH
ADDITIONAL PORTIONS OF THE COURT'S DECISION**

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For the reasons stated below, the United States does not oppose the relief sought in the instant Motion.

BACKGROUND

In August 2008, this Court issued an opinion upholding the constitutionality of the Protect America Act of 2007, Pub. L. No. 110-55, 121 Stat. 552. In a subsequent Order issued on January 12, 2009, the Court noted its determination that “[i]t would serve the public interest and the orderly administration of justice to publish this opinion” but that “[p]ublication of an unredacted opinion would disclose materials that have been properly classified by the Executive Branch.” *In re Directives [redacted text] Pursuant to Section 105B of the Foreign Intelligence Surveillance Act*, 551 F.3d 1004, 1016 (Foreign Intel. Surv. Ct. of Rev. 2008). The Court thus consulted with the Executive Branch and made redactions of classified material before publishing its opinion. *See id.* In paragraph 3 of its January 12, 2009 Order, the Court directed:

Classified information pertaining to this case includes, but is not limited to, information that has been redacted from the classified version of the Court’s opinion, such as the identity of the petitioner and the intelligence sources and methods at issue. The term also includes information derived from the case that would tend to reveal classified matters, such as the identity of the petitioner or the intelligence sources and methods at issue.

Id. at 1017.

STATEMENT

Movant, who was the petitioner in the 2008 litigation, asks this Court to issue an order stating “(1) that [the Court] does not object to the Government’s release of additional portions of its opinion in this case and (2) directing the Government to revisit its classification decisions under Executive Order 13,526 to determine if classification remains appropriate in light of recent disclosures.” Motion at 8. The United States does not object to either of these requests.

With respect to Movant’s request that the Court issue an order stating that “it does not object to the Government’s release of additional portions of its opinion in this case,” the Government takes no position. Whether the Court wishes to publicly state that it does not object to the Government’s release of additional portions of its 2008 opinion is within the discretion of the Court.

Movant also asks this Court to direct the Government to conduct a new classification review of the August 2008 opinion. The United States does not object to this request, although it notes that it is not necessary for this Court to provide this relief, as Movant could obtain a new classification review by making a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552. In any event, the Government is willing to conduct a new classification review of the opinion in response to such a request or in response to a request from this Court.

The Government has already determined that, pursuant to EO 13526 section 3.1(d) and the public interest in disclosure of the information in the Motion and due to specific facts related to Movant and to statements that the Government has made in response to recent unauthorized disclosures, the identity of the petitioner in the 2008 litigation can now be declassified. The

Government thus has no objection to the Court making the Motion and this Response publicly available.¹

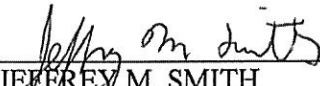
June 25, 2013

Respectfully submitted,

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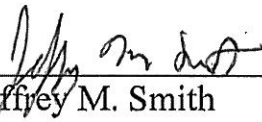
Attorneys for the United States of America

¹ The Motion does not explicitly identify Movant. It does, however, contain information that could allow someone familiar with certain publicly available information to determine the identity of Movant which is, as noted, also the petitioner in the 2008 litigation.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the United States' Response to Provider's Motion under FISC Rule 62 to Publish Additional Portions of the Court's Decision was served via Federal Express overnight delivery on this 25th day of June, 2013, addressed to:

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