U.S. Department of Justice

Civil Division

May 19, 2004

By Federal Express

Honorable Denise Page Hood
United States District Judge
Eastern District of Michigan
Theodore Levin United States Courthouse
231 W. Lafayette Boulevard
Detroit, Michigan 48226

Re: Muslim Community Association of Ann Arbor, et al., v. Ashcroft, et al., Civil No. 03-72913 (E.D. Mich.)

Dear Judge Hood:

Defendants filed their motion to dismiss this action on October 3, 2003, together with a declaration executed by James A. Baker, Counsel for Intelligence Policy, United States Department of Justice ("Baker Declar."). As stated in paragraph 3 of Mr. Baker's declaration, on or about September 18, 2003, the Attorney General declassified the number of times that the Department of Justice, including the Federal Bureau of Investigation (FBI), has utilized Section 215 of the USA PATRIOT Act (which is the subject of plaintiffs' challenge in this action). During the period between October 26, 2001 and September 18, 2003, the Department, including the FBI, presented no applications to the Foreign Intelligence Surveillance Court ("FISA Court") for issuance of an order authorized by Section 215. Baker Declar., ¶ 3. The Attorney General's declassification determination applied only to the number of times Section 215 had been used up to the date of his decision (*i.e.*, September 18, 2003). Similarly, Mr. Baker's testimony regarding the use of Section 215 pertains solely to the period identified in his declaration, which encompasses the entire period covered by the factual allegations in plaintiffs' complaint in this action. As defendants emphasized in the memorandum filed in support of their motion to dismiss, "the Government may use this provision under appropriate circumstances in the future . . . ." Memorandum in Support of Defendants' Motion to Dismiss, at 1.

The purpose of this letter is to advise the Court that, pursuant to 50 U.S.C. § 1862(b), on or before June 30, 2004, the Department of Justice expects to submit to the judiciary committees of the United States Senate and the U.S. House of Representatives a biennial report that will contain information regarding Section 215 applications, if any, submitted during the period July 1, 2003 to December 31, 2003. Thus, the report will include a three and a half month period that is not addressed

in Mr. Baker's declaration (*i.e.*, from September 19, 2003 to December 31, 2003). Because plaintiffs' complaint was filed before the latter period commenced, any Section 215 applications that might have been submitted during that three and one half month period fall outside of the time period encompassed by plaintiffs' factual allegations in this action.

The information contained in the report is to be submitted to the committees in classified form, and is not subject to public release. *See American Civil Liberties Union v. United States Department of Justice*, Civil Action No. 03-2522 ESH (D.D.C. May 10, 2004), slip op., at 2-3, 21 (copy attached). Given the unique need for confidentiality in the context of foreign intelligence investigations, the Government is simply not in a position to undertake an obligation to keep the Court or the plaintiffs informed on an ongoing basis if and when the Government seeks a Section 215 Order from the Foreign Intelligence Surveillance Court. Nevertheless, as the Government has explained, the recipients of any Section 215 orders will have a full and fair opportunity to present any constitutional objections to the orders before the issuing FISA court.

To ensure that the public record relating to the proceedings before this Court is complete, defendants are filing a copy of this letter with the Court's clerk. Should the Court require any further information with respect to these matters, upon request by the Court, defendants will endeavor to provide it in a form and manner appropriately tailored to the nature and classification level of the information needed.

Respectfully submitted,

Joseph W. LoBue

Joseph W. LoBue
Senior Trial Counsel

Enclosure

cc: All Counsel