

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE ORDERS OF THIS COURT

INTERPRETING SECTION 215

Docket No. Misc. 13-02

OF THE PATRIOT ACT

ORDER

This matter involves a motion by the American Civil Liberties Union (“ACLU”) and the American Civil Liberties Union of the Nation’s Capital (“ACLU-NC”) for release of certain opinions of the Foreign Intelligence Surveillance Court. In particular, movants seek release of opinions on Section 215 of the Patriot Act, 50 U.S.C. § 1861¹—that is, the business records provision of the Foreign Intelligence Surveillance Act (“FISA”), codified as amended at 50 U.S.C. §§ 1801-1885c.

Under orders of the Court issued on September 13 and October 8, 2013, the government was required to conduct a declassification review of a FISC opinion issued on February 19, 2013, in Docket No. BR 13-25 (“Opinion”) and to submit to the Court its proposed redactions of that Opinion, if any, in order to inform the Court’s decision whether to publish it under FISC Rule 62(a). On November 18, 2013, the government advised that, “[a]fter careful review of the Opinion by senior intelligence officials and the U.S. Department of Justice, the Executive Branch has determined that the Opinion should be withheld in full and a public version of the Opinion

¹ See Pub. L. No. 107-56, § 215, 115 Stat. 287 (2001), codified as amended at 50 U.S.C. § 1861.

cannot be provided.” Second Submission of the United States in Response to the Court’s October 8, 2013 Order at 2. The government has provided no explanation of this conclusion.

Accordingly, it is hereby ORDERED that, no later than December 20, 2013, the government shall submit a detailed explanation of its conclusion that the Opinion is classified in full and cannot be made public, even in a redacted form. To the extent that this submission may contain classified information, it shall conform with FISC Rule 7(j), which provides:

At the request of the government in an adversarial proceeding, the Judge must review *ex parte* and *in camera* any submissions by the government, or portions thereof, which may include classified information. Except as otherwise ordered, if the government files *ex parte* a submission that contains classified information, the government must file and serve on the non-governmental party an unclassified or redacted version. The unclassified or redacted version, at a minimum, must clearly articulate the government’s legal arguments.

So ORDERED this 20th day of November, 2013, in Docket No. Misc. 13-02.

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