

JAN 12 2009

U.S. Foreign Intelligence
Surveillance Court of Review

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE
COURT OF REVIEW

IN RE DIRECTIVES [REDACTED])
PURSUANT TO SECTION 105B)
OF THE FOREIGN INTELLIGENCE)
SURVEILLANCE ACT)

Docket No. 08-01

ORDER

WHEREAS,

1. An opinion that addresses and resolves issues of statutory and constitutional significance has been filed under seal;
2. It would serve the public interest and the orderly administration of justice to publish this opinion;
3. Publication of an unredacted opinion would disclose materials that have been properly classified by the Executive Branch;
4. Redactions, after consultation with the Executive Branch, can be made to exclude such classified materials without distorting the content of the discussion of the statutory and constitutional issues;
5. Such redactions have been made by the Court;

IT IS HEREBY ORDERED that:

1. The redacted opinion shall be published in the usual manner employed by the United States Courts of Appeals.
2. Notwithstanding the publication of the redacted opinion, the parties and their counsel,

and any agent of, or other person(s) working in concert with, any party or counsel, shall continue to handle and safeguard all classified information pertaining to this case in accordance with applicable security requirements and regulations and applicable orders issued by this Court or the FISC. No party or counsel (nor any agent of, or other person(s) working in concert with, any party or counsel) shall disclose publicly or to any unauthorized person or persons any classified information pertaining to this case.

3. 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. That 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.

4. All court records in this case (including the proceedings before this Court and the FISC) that contain classified information shall be maintained under seal and in accordance with applicable security requirements and previous court orders. Such records shall not be disclosed publicly or to any unauthorized person or persons without the express permission of this Court first had and obtained (or in the case of lower court records, without the express permission of the FISC first had and obtained). No other documents containing classified information pertaining to this case, such as declarations, correspondence, memoranda, notes, drafts, or other communications, shall be disclosed publicly or to any unauthorized person or persons without the express permission of the Court first had and obtained. This Court shall act on any request to disclose court records or other documents containing classified information anent this case only after consultation with the Executive Branch.

5. As used herein, the term "classified information" includes any information, document, or portion of a document, not included in the published, redacted opinion, that has been and remains classified by an Executive Branch agency or official pursuant to applicable Executive Orders as "CONFIDENTIAL," "SECRET," "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTALIZED INFORMATION," or any information, document, or portion of a document that has been derived from such classified information, whether in written, oral, or other form. The term "unauthorized person" refers to any individual or entity that has not been granted access by the Court to classified information pertaining to the case, or that has not, in accordance with applicable Executive Orders, (1) received the requisite security clearance, (2) signed an appropriate nondisclosure agreement, and (3) been determined to have a need to know the classified information at issue.

6. Publication of the redacted opinion shall not occur until 72 hours after the filing of this Order to allow the Executive Branch to notify affected persons of this Order and to make appropriate notifications to Congress.

7. Any violation of this Order shall immediately be brought to the Court's attention. The unauthorized use or disclosure of classified information pertaining to this case may violate federal criminal law and could result in civil or criminal penalties for contempt of court.

8. This Order supersedes the Order issued by the Court on January 5, 2009.

IT IS SO ORDERED, this 12th day of January, 2009, at 12:00 p.m. EST.



Hon. Bruce M. Selya
Presiding Judge