

PROCEDURES FOR REVIEW OF PETITIONS FILED PURSUANT TO SECTION 501(f) OF
THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED

Effective May 5, 2006

I. IN GENERAL

Section 1. Limited Scope. These procedures govern the filing and disposition of petitions pursuant to Section 501(f) of the Foreign Intelligence Surveillance Act of 1978, as amended (hereafter, “the Act”).

Section 2. Rules of the Foreign Intelligence Surveillance Court Apply. These procedures supplement the *Rules of Procedure* of the Foreign Intelligence Surveillance Court (available at www.uscourts.gov/rules), which govern all matters before this Court.

II. PETITION AND OTHER PAPERS

Section 3. Filing.

(a) **Who May File.** The recipient of an Order to produce a tangible thing under Section 501 of the Act may file a petition challenging the Order pursuant to Section 501(f) of the Act. A petition may be filed through counsel.

(i) **Petitioner’s Initial Filing.** The petition or other paper initially filed shall include the petitioner’s full name, mailing address, e-mail address, and telephone number. If the petitioner is represented by counsel, the petition or other paper initially filed shall include the petitioner’s full name and the full name of the petitioner’s attorney, as well as the attorney’s address, telephone number, e-mail address, facsimile number, and bar membership information.

(ii) **Government’s Initial Filing.** The government’s initial response shall include the full name of the attorneys representing the United States, and their mailing addresses, e-mail addresses, telephone numbers, and facsimile numbers.

(b) **Where to File.**

(i) **Challenging an Unclassified Order.** Filing a petition and any related papers challenging an unclassified Production Order or Nondisclosure Order may be accomplished by hand delivery or by overnight delivery to the Foreign Intelligence Surveillance Court’s Security Officer (hereafter, “the Court Security Officer”), c/o Security and Emergency Planning Staff, United States Department of Justice, Room 6217, 950 Pennsylvania Ave., NW, Washington, DC 20530. A signed original and one copy of all papers must be submitted.

(ii) **Challenging a Classified Order.** Filing a petition and any related papers challenging a classified Production Order or Nondisclosure Order (i.e., marked Confidential, Secret, or Top Secret), may be accomplished by contacting the Court Security Officer by telephone to receive instructions about how to file and

serve the petition and any related papers. (The Court Security Officer may be contacted by calling the Department of Justice Command Center at 202-514-5000, and asking to be directed to the Director, Security and Emergency Planning Staff).

(c) Time to File Petition.

(i) Challenging a Production Order. A petition challenging an Order to produce a tangible thing must be filed within 20 days after the Order has been served.

(ii) Challenging a Nondisclosure Order. A petition challenging a Nondisclosure Order issued under Section 501(d) may not be filed with this Court earlier than one year after the date of the issuance of the Production Order containing the challenged Nondisclosure Order.

(iii) Subsequent Petition Challenging a Nondisclosure Order. If a Judge denies a petition to modify or set aside a Nondisclosure Order, the petitioner may not file with this Court a subsequent petition challenging the same Nondisclosure Order earlier than one year after the date of the denial.

(d) Effective Date of Filing.

(i) By Petitioner. A petition or other papers submitted by the petitioner shall be considered to be filed on the date received by the Court Security Officer. The Court Security Officer shall transmit all submissions to the Clerk of the Foreign Intelligence Surveillance Court (hereafter, “the Clerk of the Court”) on the same date that they are received.

(ii) By Government. The government’s response and other papers submitted by the government shall be considered to be filed on the date that they are received by the Clerk of the Court.

Section 4. Content of Petition.

(a) Grounds for Petition. A petition shall concisely state the factual and legal grounds for modifying or setting aside the challenged Order.

(b) Access to Classified Information. A petition shall state whether the petitioner and/or the petitioner’s attorney previously have been provided access to classified information and the circumstances of such access.

(c) Request to Stay Production.

(i) Petition Does Not Automatically Effect a Stay. A petition does not automatically effect a stay of the underlying Order. In order to stay a Production Order, petitioner must request such relief and it must be granted by the judge to whom the matter is assigned.

(ii) Stay May Be Requested Prior to Filing of a Petition. A petitioner may request a stay of a Production Order prior to filing a petition challenging such Order.

(d) Underlying Order. A petition shall include a copy of the Production Order to which it relates and state the date on which such Order was served upon petitioner.

(e) Petitioner's Request for Hearing. A petition shall state whether a hearing is requested and, if so, whether the petitioner (or petitioner's counsel) seeks to appear personally in the Washington, D.C., area at petitioner's expense, or to participate in a hearing via teleconference.

Section 5. Form and Length of Petition and Other Papers.

(a) Form. A petition and other papers filed shall be:

- (i)** on 8½ by 11 inch opaque white paper;
- (ii)** typed (double space) or reproduced in a manner that produces a clear black image;
- (iii)** conspicuously marked "SECTION 501(f) PETITION" on the document itself and any accompanying envelope; and
- (iv)** filed under seal.

(b) Length.

(i) Petition. Unless otherwise authorized by the assigned Judge, a petition shall not exceed 20 pages in length, including any attachment.

(ii) Other Papers.

(A) Government's Response. Unless otherwise authorized by the assigned Judge, the government's response shall not exceed 20 pages in length, including any attachment.

(B) Petitioner's Reply. Unless otherwise authorized by the assigned Judge, the petitioner's reply, if any, shall not exceed 10 pages in length, including any attachment.

(C) Additional Papers. No sur-replies may be filed without leave of the Court.

Section 6. Service.

(a) By Petitioner. A petitioner shall, at or before the time of filing a petition or other paper, serve a copy by hand delivery or by overnight delivery on the United States Department of Justice, National Security Division, 950 Pennsylvania Ave., NW, Room 6150, Washington, D.C. 20530 and on the Federal Bureau of Investigation, Office of General Counsel, National Security Law Branch, 935 Pennsylvania Ave., NW, Room 7947, Washington, D.C. 20535.

(b) By Government. The government shall, at or before the time of filing a response or other paper, serve a copy by hand delivery or by overnight delivery on petitioner's counsel of record or, if the petitioner is proceeding *pro se*, on the petitioner.

Section 7. Computation of Time. In proceedings governed by these procedures, any period of time shall be computed in the manner specified in Rule 6(a) of the Federal Rules of Civil Procedure. The provisions of Rule 6(e) of the Federal Rules of Civil Procedure shall not apply to the computation of time in these proceedings.

III. ASSIGNMENT TO A JUDGE

Section 8. Notifying Presiding Judge. Upon receipt, the Clerk of the Court shall notify the Presiding Judge of the Foreign Intelligence Surveillance Court that a petition has been received from the Court Security Officer.

(a) **Presiding Judge Unavailable.** If the Presiding Judge is not reasonably available when the Clerk of the Court receives a petition, the Clerk of the Court shall notify the local Judge, other than the Presiding Judge, who has the most seniority on the Court. If no local Judge is reasonably available, the Clerk of the Court shall notify the Judge with the most seniority on the Foreign Intelligence Surveillance Court who is reasonably available. The Judge who receives notification shall be the Acting Presiding Judge (hereafter, “the Presiding Judge”) for the case.

Section 9. Assignment.

(a) **Presiding Judge.** Immediately upon receiving notification from the Clerk of the Court that a petition has been filed, the Presiding Judge shall assign the matter to a Foreign Intelligence Surveillance Court Judge in the petition review pool (hereafter, “the Judge”). The Clerk of the Court shall record the date and time of the assignment.

(b) **Transmitting Petition.** As soon as possible, and no later than 24 hours after being notified by the Presiding Judge that a petition has been assigned to one of the pool Judges, the Clerk of the Court shall transmit the original or a copy of petition to that Judge.

IV. CONSIDERATION OF PETITION

Section 10. Initial Review.

(a) **When.** The Judge shall conduct an initial review of the petition within 72 hours after being assigned the petition.

(b) **Frivolous Petition.** If the Judge determines that the petition is frivolous, the Judge shall:

- (i) immediately deny the petition and affirm the challenged Order;
- (ii) promptly provide a written statement of the reasons for the denial; and
- (iii) provide a written ruling, together with the statement of reasons, to the Clerk

of the Court, who will transmit them to the Court Security Officer for immediate delivery to the petitioner and the government.

(c) Non-Frivolous Petition.

(i) Scheduling. If the Judge determines that the petition is not frivolous, the Judge shall promptly issue an Order that sets a schedule for its consideration. The Clerk of the Court shall transmit a copy of the Order to the petitioner and the government.

(ii) Manner of Proceeding. At the Judge's discretion, a hearing may be held or the proceedings may be conducted solely on the papers submitted by the petitioner and the government.

Section 11. Response and Reply.

(a) Government's Response. Unless otherwise ordered by the Judge, the government's response must be filed within 20 days after the issuance of the initial scheduling order. If the government's response, or any other paper the government is permitted to file, contains classified information that is submitted *ex parte*, the government also shall file with the Court and serve on the petitioner an unclassified or redacted version. The unclassified or redacted version, at a minimum, should clearly articulate the government's legal arguments.

(b) Petitioner's Reply. The petitioner may file a reply to the government's response within 10 days after the date the government's response is served.

Section 12. Hearing.

(a) Request. The petitioner or the government may request a hearing.

(b) Location. Hearings shall be held in the Washington D.C. area at a location to be determined by the Judge.

(c) In Camera. All hearings shall be *in camera*.

(d) Recording. All hearings shall be recorded, either by sound or stenographic means.

Section 13. Ex Parte Proceedings. At the request of the government, the Judge shall review *ex parte* and *in camera* any papers submitted by the government, or portions thereof, which may include classified information.

Section 14. Rulings on Non-frivolous Petitions.

(a) Written Statement of Reasons. The Judge shall promptly provide a written statement of the reasons for modifying, setting aside, or affirming a Production or Nondisclosure Order. The statement may include classified information.

(b) Reinstatement of Underlying Order. If the Judge does not modify or set aside the underlying Order, the Judge shall immediately affirm it and order the recipient to comply therewith.

(c) Transmitting the Judge's Ruling. The Clerk of the Court shall transmit the Judge's ruling and written statement of reasons to the Court Security Officer for immediate delivery to the petitioner and the government. If the Judge's ruling or written statement contains classified information, an unclassified or redacted version shall be provided to the petitioner.

Section 15. Appeals and Sanctions

(a) Appeals. The government or the petitioner may request the Foreign Intelligence Surveillance Court of Review to review the Judge's ruling.

(b) Failure to Comply. If a recipient fails to comply with an Order affirmed under Section 501(f) of the Act and these procedures, the government, pursuant to Rule 15 of the Foreign Intelligence Surveillance Court *Rules of Procedure*, may file a motion with the Foreign Intelligence Surveillance Court (for referral to the Judge of the Court who entered the underlying Order) seeking enforcement of the affirmed Order. The Court may consider the government's motion without convening further proceedings on the matter.