



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave., N.W., Rm: 7325
Washington, D.C. 20530-0001

DNL:SRM:KTAllen

Tel: (202) 514-5048
Fax: (202) 514-7964

February 12, 2015

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Attn: Susan Soong

RE: In re: Under Seal v. Holder, Nos. 13-15957, 13-16731, & 13-16732
[Argued before Judges Ikuta, N.R. Smith, and Murguia on October 8, 2014]

Dear Ms. Dwyer:

Oral argument in the above-referenced appeals was held before Judges Ikuta, N.R. Smith, and Murguia on October 8, 2014. The government submits this letter under Fed.R.App.P. 28(j) to bring to the Court's attention a change in policy regarding National Security Letter nondisclosure requirements recently announced by the Office of the Director of National Intelligence (ODNI).

On February 3, 2015, ODNI issued the Signals Intelligence Reform 2015 Anniversary Report (<http://icontherecord.tumblr.com/ppd-28/2015/overview>). As potentially relevant here, the Report states:

[T]he FBI will now presumptively terminate National Security Letter nondisclosure orders at the earlier of three years after the opening of a fully predicated investigation or the investigation's close.

Continued nondisclosure[] orders beyond this period are permitted only if a Special Agent in Charge or a Deputy Assistant Director determines that the statutory standards for nondisclosure continue to be satisfied and that the case agent has justified, in writing, why continued nondisclosure is appropriate.

See <http://icontherecord.tumblr.com/ppd-28/2015/privacy-civil-liberties#letters>.

The FBI is in the process of formulating and drafting guidelines for the implementation of the policy described in the Report. Because this process is not yet complete, the potential applicability of the new policy to the NSLs at issue in the above-referenced appeals remains to be determined. We will advise the Court when this additional information becomes available.

Thank you for bringing this letter to the prompt attention of the panel.

Sincerely,

/s/ Katherine T. Allen
Katherine T. Allen
Attorney, Appellate Staff
Civil Division

CC: Cindy Cohn (ECF and email)