

[Redacted] (RMD)(FBI)

From: [Redacted] (GB)(FBI)
Sent: Thursday, July 02, 2009 10:30 AM
To: [Redacted] (OGC) (FBI)
Subject: RE: Director's Testimony, 5/20/09 SJC QFRs
Importance: High

b6 -1
b7C -1

UNCLASSIFIED
NON-RECORD

[Redacted] b6 -1
[Redacted] b7C -1

b5 -2

[Redacted]

b5 -1

[Redacted]

29(b). Please provide the exact number of NSLs issued since December 15, 2008, broken down both by the number with and without a nondisclosure requirement and by the number with and without a notice of the right to challenge the nondisclosure requirement.

Let me know if you need anything else.

[Redacted]
National Security Law Branch
Office of the General Counsel
Foreign Intelligence Surveillance Act Unit
FBIHQ - Room [Redacted]

b6 -1
b7C -1

From: [Redacted] (OGC) (FBI)
Sent: Tuesday, June 23, 2009 12:57 PM
To: [Redacted] (OGC) (FBI)
Subject: FW: Director's Testimony, 5/20/09 SJC QFRs

b6 -1
b7C -1

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NON-RECORD

[Redacted]
Could you pull together the numbers for 29(b)? There is so time but I will need these stats to answer the question so I want to let you know. Also, [Redacted] b6 -1
[Redacted] b7C -1

b5 -1

Thanks,

[Redacted]
From: [Redacted] (OGC) (FBI)
Sent: Tuesday, June 23, 2009 12:49 PM

b6 -1
b7C -1

To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI)
Subject: Director's Testimony, 5/20/09 SJC QFRs

b6 -1
b7C -1

UNCLASSIFIED
NON-RECORD

b6 -1
b7C -1

[redacted]
I'm sorry to report that you have the most QFRs of all: 27, 29, 30 and 32. Can you please get a draft response to me by COB 7/6/09? That will allow me to try to ensure some consistency across our many responses.

Questions Posed by Representative Nadler

27. **OGC**. The DOJ IG issued its second report on the FBI's use of NSLs in March 2008. In this second report the IG made 17 recommendations. The FBI said it agreed with and would implement all of these suggestions. NSLB

a. What is the status of the FBI's implementation of each of these 17 recommendations from March 2008? Please provide information explaining what actions the FBI has taken and is taking to implement each of these recommendations or why it is taking no such actions. When do you expect each of these recommendations to be fully put into place?

Response:

b. Assuming Recommendation Number Two, which calls for the FBI to do spot checks of NSLs to make sure data is being entered properly, has been fully implemented, what has the FBI learned by doing these spot checks?

Response:

29. **OGC**. In December 2008, the Second Circuit Court of Appeals, in *Doe v. Mukasey*, held unconstitutional both the conclusive treatment of the government's certification that disclosure of NSLs would hurt national security, diplomatic relations, certain investigations, etc. and the imposition of a nondisclosure requirement without the government initiating judicial review. It reasoned that reciprocal notice, in which people who want to challenge the nondisclosure order tell the government as such and then the government has to go to court to maintain the nondisclosure provision, would be constitutional. In a May 9, 2009 letter to Judiciary Committee Chairman John Conyers announcing the government would not appeal this decision, Attorney General Eric Holder suggests this reciprocal notice approach is being used. He writes that since *Doe* the FBI has issued more than 3,000 NSLs with a notice of the right to challenge the nondisclosure provision, which would force the government to go to court to enforce the nondisclosure requirement, and that so far no one has invoked that right. NSLB

a. To what does the phrase "more than 3,000 NSLs" in the May 9, 2009 letter refer? Is that the number of all national security letters issued by the FBI since the date of the *Doe* decision (December 15, 2008) or the number of a certain subset of those NSLs? If it is a subset of those NSLs, please explain and describe what is contained by that subset.

Response:

b. Please provide the exact number of NSLs issued since December 15, 2008, broken down both by the number with and without a nondisclosure requirement and by the number with and without a notice of the right to challenge the nondisclosure requirement.

Response:

c. Has the FBI provided this notice to recipients of NSLs in all jurisdictions, and not just to recipients in the Second Circuit? In the future, will the FBI be providing this notice to recipients of NSLs in all jurisdictions, and not just in the Second Circuit?

Response:

d. Has the FBI been providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709? In the future, will the FBI be providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709?

Response:

e. Please provide a copy of the notice the FBI is sending to NSL recipients that informs them of their right to challenge the nondisclosure provision.

Response:

30. **OGC.** Before the Second Circuit's opinion in *Doe*, the FBI Office of General Counsel (OGC) issued a directive that the nondisclosure orders were not supposed to be "automatically" included in the NSLs or made in a "perfunctory manner" and only when there was a "genuine need." In its March 2008 report on NSLs, the DOJ IG found that 97 percent of the NSLs it examined contained a nondisclosure order. Considering that 97 percent of NSLs issued had a nondisclosure order, how would the FBI respond to the conclusion that such orders were being included automatically and not always when there was a genuine need? Does the FBI agree or disagree that such a conclusion would be reasonable? Why or why not?

Response:

32. **OGC.** Both the March 2007 and March 2008 reports on NSLs by the DOJ IG illustrate numerous errors and abuses with respect to NSLs. It is also clear that errors and abuses were made with specific respect to the use of exigent letters. Were employees of the FBI held accountable or otherwise disciplined for the past errors and abuses outlined in the March 2007 and/or March 2008 reports by the DOJ IG or any other past errors and abuses with respect to NSLs? Are employees of the FBI currently being held accountable or otherwise disciplined for errors and abuses with respect to NSLs? Please provide any applicable information explaining how FBI employees were or are being held accountable or otherwise so disciplined.

Response:

UNCLASSIFIED

[Redacted]

(RMD)(FBI)

b6 -1
b7C -1

From: [Redacted] (OGC) (FBI)
Sent: Monday, July 06, 2009 10:19 AM
To: [Redacted] (OGC) (FBI)
Subject: RE: Director's Testimony, 5/20/09 SJC QFRs

UNCLASSIFIED
NON-RECORD

Still working on 27 - that's the hard one.

29. **OGC**. In December 2008, the Second Circuit Court of Appeals, in *Doe v. Mukasey*, held unconstitutional both the conclusive treatment of the government's certification that disclosure of NSLs would hurt national security, diplomatic relations, certain investigations, etc. and the imposition of a nondisclosure requirement without the government initiating judicial review. It reasoned that reciprocal notice, in which people who want to challenge the nondisclosure order tell the government as such and then the government has to go to court to maintain the nondisclosure provision, would be constitutional. In a May 9, 2009 letter to Judiciary Committee Chairman John Conyers announcing the government would not appeal this decision, Attorney General Eric Holder suggests this reciprocal notice approach is being used. He writes that since *Doe* the FBI has issued more than 3,000 NSLs with a notice of the right to challenge the nondisclosure provision, which would force the government to go to court to enforce the nondisclosure requirement, and that so far no one has invoked that right. NSLB

a. To what does the phrase "more than 3,000 NSLs" in the May 9, 2009 letter refer? Is that the number of all national security letters issued by the FBI since the date of the *Doe* decision (December 15, 2008) or the number of a certain subset of those NSLs? If it is a subset of those NSLs, please explain and describe what is contained by that subset.

Response:

b5 -1

[Redacted]

b5 -1
b7E -1

b. Please provide the exact number of NSLs issued since December 15, 2008, broken down both by the number with and without a nondisclosure requirement and by the number with and without a notice of the right to challenge the nondisclosure requirement.

Response:

[Redacted]

b5 -1
b7E -1

c. Has the FBI provided this notice to recipients of NSLs in all jurisdictions, and not just to recipients in the Second Circuit? In the future, will the FBI be providing this notice to recipients of NSLs in all jurisdictions, and not just in the Second Circuit?

Response:

b5 -1
b7E -1

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b5 -1

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