

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

2020 JUL 13 AM 9:09
LEEANN FLYNN HALL
CLERK OF COURT

IN RE OPINIONS & ORDERS OF THIS COURT
CONTAINING NOVEL OR SIGNIFICANT
INTERPRETATIONS OF LAW

Docket No. Misc. 16-01

STATUS REPORT

The American Civil Liberties Union (“ACLU”), Movant in this miscellaneous matter, files this status report to note respectfully that the matter is ready for decision.

Movant filed this motion on October 18, 2016, arguing that, under the First Amendment, there is a qualified right of public access to Foreign Intelligence Surveillance Court (FISC) “opinions and orders containing novel or significant interpretations of law issued between September 11, 2001 and the passage of the USA Freedom Act on June 2, 2015.”¹ Mot. of the ACLU for the Release of Ct. Records, at 1. As Movant explained in its motion, “experience and logic” support a right of access to such opinions because federal court opinions, including those interpreting the scope of government surveillance power, have historically been public, and public access to such opinions “allows the public to function as an essential check on the government and improves judicial decisionmaking.” *Id.* at 10–11, 13.

The parties completed briefing in this matter over three years ago, on June 29, 2017. The matter was assigned to Judge Rosemary M. Collyer, who completed her service on this Court on

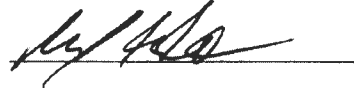
¹ Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act (“USA FREEDOM Act”), Pub. L. No. 114-23, 129 Stat. 268 (2015).

March 7, 2020, before issuing any decision.² Movant has not been notified whether a new judge has been assigned.

Movant respectfully requests that the Court assign the matter to a new judge, if the Court has not done so already, so that the matter can be resolved.

Dated: July 10, 2020

Respectfully submitted,



Michael Perloff*
Arthur B. Spitzer
American Civil Liberties Union Foundation
of the District of Columbia
915 15th Street NW, 2nd Floor
Washington, D.C. 20005
Phone: (202) 457-0800
mperloff@acludc.org

Patrick Toomey
Brett Max Kaufman
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500
Fax: (212) 549-2654
ptoomey@aclu.org

² Judge Collyer denied a different motion by Movant and other organizations seeking access to a distinct subset of this Court's orders and opinions. *See In re Opinions & Orders of this Ct. Addressing Bulk Collection of Data Under FISA*, No. Misc. 13-08, 2020 WL 897659, at *3 (FISC Feb. 11, 2020) (hereinafter "Misc. 13-08"). That ruling does not collaterally estop litigation of the right of access question that is at issue here. The Foreign Intelligence Surveillance Court of Review held that it lacked jurisdiction to review the Court's decision in Misc. 13-08, *see In re Opinions & Orders By FISC Addressing Bulk Collection of Data Under FISA*, 957 F.3d 1344, 1358 (FISCR 2020), and collateral estoppel does not apply if "the party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgments in the initial action." Restatement (Second) of Judgments § 28(1); *see also Bravo-Fernandez v. United States*, 137 S. Ct. 352, 358 (2016); *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 647 (2006).

* Pursuant to FISC R. P. 7(h)(1) and (i)(1), Movant submits that Michael Perloff is a member of good standing in the United States District Court for the District of Columbia and is licensed to practice law by the bars of the State of New York and the District of Columbia. He does not possess a security clearance.

David Schulz
Charles Crain
Media Freedom & Information Access
Clinic, Abrams Institute
Yale Law School
P.O. Box 208215
New Haven, CT 06510
Phone: (203) 436-5827
Fax: (203) 432-3034
david.schulz@ylsclinics.org

Alex Abdo
Jameel Jaffer
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
Phone: (646) 745-8500
alex.abdo@knightcolumbia.org

Counsel for Movant

CERTIFICATE OF SERVICE

I, Michael Perloff, certify that on this day, July 10, 2020, a copy of the foregoing motion was served on the following persons by the methods indicated:

By email:

Daniel O. Hartenstine
Litigation Security Group
U.S. Department of Justice
2 Constitution Square
145 N Street, N.E. Suite 2W-115
Washington, DC 20530
Daniel.O.Hartenstine@usdoj.gov

By email:

Jeffrey Smith
Counsel, Appellate Unit
U.S. Department of Justice
National Security Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Jeffrey.Smith5@usdoj.gov


Michael Perloff