U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

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LEEANN FLYNN HALL
CLERK OF COURT

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

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,

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[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.

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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:

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