Filed
United States Foreign Intelligence
Surveillance Court of Review

NOV 19 2020

LeeAnn Flynn Hall, Clerk of Court

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

WASHINGTON, D.C.

IN RE OPINIONS AND ORDERS OF THE FISC CONTAINING NOVEL OR SIGNIFICANT INTERPRETATIONS OF LAW.	Docket No. Misc. 20-02

OPINION AND ORDER

Earlier this year, this Court dismissed for lack of jurisdiction a petition filed by a group of organizations who were seeking, based on an asserted First Amendment right of public access, disclosure of certain opinions and orders that were issued by the United States Foreign Intelligence Surveillance Court (FISC) and that contained redacted, non-public material classified by the Executive Branch. *In re Opinions & Orders by the FISC Addressing Bulk Collection of Data Under the Foreign Intelligence Surveillance Act*, 957 F.3d 1344 (FISA Ct. Rev. 2020) (*In re Opinions & Orders by the FISC on Bulk Collection*). Following our decision in that case, the FISC, considering a separate motion that sought disclosure of other FISC classified opinions and orders but likewise was based on a First Amendment right of access claim, dismissed the motion after applying our reasoning in *In re Opinions & Orders by the FISC on Bulk Collection*. *See In re Opinions & Orders of this Court Containing Novel or Significant Interpretations of Law*, FISC Docket No. Misc. 16-01 (FISA Ct. Sept. 15, 2020), *available at* https://www.fisc.uscourts.gov/public-filings/opinion-and-order-8. This appeal followed.

Movant American Civil Liberties Union filed with this Court a Petition for Review seeking to appeal the FISC's September 2020 dismissal decision or, in the alternative, a Petition for a Writ of Mandamus (Petition). In its accompanying Notice of Appeal, the Movant, citing to *In re Opinions & Orders by the FISC on Bulk Collection*, "recognize[d] that this Court has previously determined that it does not have jurisdiction to consider an appeal or petition for a writ of mandamus filed by a movant claiming a First Amendment right of public access to the FISC's legal opinions." Movant Notice of Appeal, filed Oct. 14, 2020.

On October 16, 2020, we ordered the Movant to file a brief and show cause as to why this Court has the authority to entertain the Movant's Petition. The Government also was provided the opportunity to file a response, and both Parties timely filed their briefs.

The Movant now asks this Court to "clarify or revisit" its earlier ruling in *In re Opinions & Orders by the FISC on Bulk Collection*, or in the alternative, to certify jurisdictional questions raised by the Movant's Petition to the Supreme Court of the United States. Movant Brief at 2. The Movant acknowledges that its position relies, among other things, on an interpretation of the Foreign Intelligence Surveillance Act that was rejected by this Court just over six months ago in *In re Opinions & Orders by the FISC on Bulk Collection*. *Id.* at 3. The Government counters that our decision in that case controls disposition of the Movant's Petition, and the Petition therefore should be dismissed for lack of jurisdiction.

After careful consideration of the Parties' briefs, we decline the Movant's invitation to revisit our recent decision. We conclude that *In re Opinions & Orders by the FISC on Bulk Collection* applies to our consideration of the Movant's Petition, and we are unpersuaded that the Movant has shown cause as to why this Court has jurisdiction to consider its current claims. In

light of that conclusion, this case does not present a question of law as to which instructions from the Supreme Court are desired. 50 U.S.C. § 1803(k); 28 U.S.C. § 1254(2).

The September 15, 2020 decision of the FISC is AFFIRMED, and the Movant's Petition is DISMISSED.

So ORDERED this 19th day of November, 2020.

David B. Sentelle

DAVID B. SENTELLE
Presiding Judge, United States Foreign Intelligence Surveillance Court of Review