

MAY 01 2018

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

LeeAnn Flynn Hall, Clerk of Court

IN RE OPINIONS & ORDERS OF THIS COURT  
ADDRESSING BULK COLLECTION OF DATA  
UNDER THE FOREIGN INTELLIGENCE  
SURVEILLANCE ACT.

Docket No. Misc. 13-08

**APPOINTMENT OF AMICUS CURIAE AND BRIEFING ORDER**

This matter is before the Foreign Intelligence Surveillance Court (FISC) on the Motion of the American Civil Liberties Union, the American Civil Liberties Union of the Nation's Capital, and the Media Freedom and Information Access Clinic ("Movants") for the Release of Court Records, following certification to the Foreign Intelligence Surveillance Court of Review (FISCR) of a question of law regarding Movants' Article III standing to assert a claim for access to FISC opinions. The FISCR answered the certified question by finding that Movants' claim met all three elements of standing (causation, redressability, and injury in fact) but declined the United States' request to determine also whether this Court has subject matter jurisdiction over Movants' claim and, if so, to determine the merits of the Movants' claim, believing it appropriate for the FISC to address both issues in the first instance with the benefit of full briefing by the parties. *See In re: Certification of Questions of Law to the FISCR*, FISCR Docket No. 18-01 (March 16, 2018), at 7-8.

Accordingly, it is hereby:

ORDERED that Movants file a brief setting forth the basis for their assertion of FISC subject matter jurisdiction over their claim. Movants' brief should address: (1) any statutory grant of subject matter jurisdiction over a constitutional claim for access to judicial opinions including, in particular, a discussion of whether adjudication of Movants' claim falls within the scope of 50 U.S.C. § 1803(g)(1) as an action reasonably necessary to the FISC's administration of its responsibilities under the Foreign Intelligence Surveillance Act; and (2) any other authority

supporting Movants' assertion of FISC subject matter jurisdiction over their claim including, in particular, any case law addressing the inherent authority of a court of limited or specialized jurisdiction to adjudicate claims falling outside the court's subject matter jurisdiction, as explicitly granted by statute. Movants' brief may also address the merits of their claim but only to the extent additional briefing relates to legal authority that has not been addressed in their prior submissions to the Court. Movants' brief shall be filed no later than 3:00 p.m. on June 13, 2018. It further is

ORDERED, pursuant to 50 U.S.C. § 1803(i)(2)(A), that Professor Laura Donohue, who served the FISCR in its consideration of the certified question of law noted above, is appointed to serve as amicus curiae in the continuation of the matter before the FISC. Amicus curiae is invited to file a brief addressing the above-described issues no later than 3:00 p.m. on June 13, 2018. It further is

ORDERED that any response by the United States shall be filed no later than 3:00 p.m. on July 11, 2018. In addition to addressing subject matter jurisdiction, the United States may address the merits of Movants' claim, but only to the extent additional briefing relates to legal authority that has not been addressed in its prior submissions to the Court or directly responds to arguments made in Movants' brief. It further is

ORDERED that Movants and amicus curiae shall file any reply to the United States' response no later than 3:00 p.m. on August 1, 2018. It further is

ORDERED that the attorney for the United States shall ensure that the Attorney General receives a copy of this Order pursuant to the notification requirement at 50 U.S.C. § 1803(i)(7).

SO ORDERED this 17<sup>th</sup> day of May, 2018.

  
**ROSEMARY M. COLLYER**  
Presiding Judge, United States Foreign  
Intelligence Surveillance Court