

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION, *et al.*,

Appellants,

v.

No. 19-15472

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Appellees.

NOTICE REGARDING APPELLANTS' MOTION FOR THIS COURT TO
OBTAIN FROM THE DISTRICT COURT, AND INCLUDE AS PART OF THE
RECORD ON APPEAL, CERTAIN SEALED MATERIALS

On April 15, 2019, appellants moved this Court to obtain from the district court, and include in the appellate record, certain sealed materials filed in district court cases other than the right-of-access litigation that gave rise to this appeal. On April 25, 2019, the government submitted a response explaining (1) that it had filed in the district court a motion to confirm, pursuant to Federal Rule of Appellate Procedure 10(e), that the materials at issue were part of the record before that court; and (2) that, if the court granted that motion, the government would be in a position to provide the materials to this Court in sealed, *ex parte* Excerpts of Records. The

government thus suggested that this Court might wish to hold appellants' motion in abeyance pending the district court's ruling on the Rule 10(e) motion, and stated that the government would promptly advise the Court of the district court's ruling.

The government now provides notice that, on May 3, 2019, the district court granted the government's motion under Rule 10(e) and "confirm[ed] that the Title III materials described in the [c]ourt's February 11, 2019 Order . . . were before [the district c]ourt and considered by the [c]ourt when it issued the February 11, 2019 Order that is the subject of" this appeal. Doc. 35. In light of the district court's order, a copy of which is attached to this filing, the government understands that the materials at issue are part of the record on appeal and can be submitted to this Court on a sealed, *ex parte* basis in the course of this appeal. As a result, the government does not believe that any action of this Court is needed to provide appellants the relief sought in their April 25 motion.

Respectfully submitted,

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s/ Scott A.C. Meisler
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CERTIFICATE OF SERVICE

I hereby certify that, on May 6, 2019, I electronically filed the foregoing Notice Regarding Appellants' Motion for this Court to Include as Part of the Appellate Record Certain Sealed Materials with the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s Scott Meisler
Scott A.C. Meisler

ATTACHMENT A

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE U.S. DEPARTMENT OF JUSTICE
MOTION TO COMPEL FACEBOOK TO
PROVIDE TECHNICAL ASSISTANCE IN
SEALED CASE, OPINION ISSUED IN OR
ABOUT SEPTEMBER 2018

CASE NO. 1:18-MC-00057-LJO-EPG
ORDER ON MOTION TO CONFIRM THAT
CERTAIN DOCUMENTS ARE PART OF THE
RECORD ON APPEAL

Currently pending before the Court is the Government’s motion to confirm, pursuant to Federal Rule of Appellate Procedure 10(e), that certain documents are part of the appellate record in the above-captioned case. Upon review of the Government’s motion and the record in both this matter and related sealed proceedings before the Court, the Court confirms that the Title III materials described in the Court’s February 11, 2019 Order—*i.e.*, the original motions, requests, substantive documents in support and in opposition, transcript of evidentiary hearing, resulting Court Order of Decision, and related docket entries, *see* Doc. 26 at 1-2—were before this Court and considered by the Court when it issued the February 11, 2019 Order that is the subject of the appeals in Case Nos. 19-15472 and 19-15473 (9th Cir.).

Accordingly, upon consideration of the Government’s motion to confirm that certain documents are part of the appellate record, IT IS HEREBY ORDERED that the Government’s motion is GRANTED.

IT IS SO ORDERED.

Dated: May 3, 2019

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE