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

In re Orders Issued by This Court Interpreting Section 215 of the Patriot Act	Docket No. Misc. 13-02
In re Motion for Declaratory Judgment of A First Amendment Right to Publish Aggregate Information About FISA Orders	Docket No. Misc. 13-03
In re Motion to Disclose Aggregate Data Regarding FISA Orders	Docket No. Misc. 13-04

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ABC, INC., THE ASSOCIATED PRESS, BLOOMBERG L.P., DOW JONES & COMPANY, INC., GANNETT CO., INC., LOS ANGELES TIMES, THE MCCLATCHY COMPANY, NATIONAL PUBLIC RADIO, INC., THE NEW YORK TIMES COMPANY, THE NEW YORKER, THE NEWSWEEK/DAILY BEAST COMPANY LLC, REUTERS AMERICA LLC, TRIBUNE COMPANY, AND THE WASHINGTON POST IN SUPPORT OF THE MOTION FOR THE RELEASE OF COURT RECORDS AND THE MOTIONS FOR DECLARATORY JUDGMENT

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TABLE OF CONTENTS

IDENTITY OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

ABC, Inc., alone and through its subsidiaries, owns and operates, inter alia, ABC News, abcnews.com and local broadcast television stations, including WABC-TV in New York City, which regularly gather and report news to the public. Programs produced and disseminated by ABC News include "World News with Diane Sawyer," "20/20," "Nightline," "Good Morning America" and "This Week."

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Bloomberg L.P., based in New York City, operates Bloomberg News, which is comprised of more than 1,500 professionals in 145 bureaus around the world. Bloomberg News publishes more than 6,000 news stories each day, and The Bloomberg Professional Service maintains an archive of more than 15 million stories and multimedia reports and a photo library comprised of more than 290,000 images. Bloomberg News also operates as a wire service, syndicating news and data to over 450 newspapers worldwide with a combined circulation of 80 million people in more than 160 countries. Bloomberg News operates the following: cable and

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Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with 2,000 journalists in more than fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

Gannett Co., Inc. is an international news and information company that publishes 82 daily newspapers in the United States, including *USA TODAY*, as well as hundreds of non-daily publications. In broadcasting, the company operates 23 television stations in the U.S. with a market reach of more than 21 million households. Each of Gannett's daily newspapers and TV stations operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 30 daily newspapers and related websites as well as numerous community newspapers and niche publications.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that are independently operated,

noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

The New York Times Company is the publisher of *The New York Times*, *The Boston Globe*, and *International Herald Tribune* and operates such leading news websites as nytimes.com and bostonglobe.com.

The New Yorker is an award-winning magazine, published weekly in print, digital, and online.

The Newsweek/Daily Beast Company LLC publishes Newsweek magazine and operates the website TheDailyBeast.com. The 80-year-old Newsweek magazine became an industry leader by going all-digital in 2013. It is now one of the largest tablet magazines in the world. Available weekly across digital platforms, Newsweek is written with a global perspective for a global audience. The Daily Beast, founded by Newsweek/Daily Beast Editor in Chief Tina Brown in 2008, offers award-winning journalism spanning every major news vertical, from politics and world news to fashion, film, and art. Winner of the 2012 Webby Award for Best News Website, The Daily Beast attracts over 16 million unique visitors per month and is among the fastest-growing news destinations on the web.

Reuters, the world's largest international news agency, is a leading provider of real-time multi-media news and information services to newspapers, television and cable networks, radio stations and websites around the world. Through Reuters.com, affiliated websites and multiple online and mobile platforms, more than a billion professionals, news organizations and consumers rely on Reuters every day. Its text newswires provide newsrooms with source material and ready-to-publish news stories in twenty languages and, through Reuters Pictures

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Tribune Company operates broadcasting, publishing and interactive businesses, engaging in the coverage and dissemination of news and entertainment programming. On the broadcasting side, it owns 23 television stations, a radio station, a 24-hour regional cable news network and "Superstation" WGN America. On the publishing side, Tribune publishes eight daily newspapers — *Chicago Tribune*, *Hartford* (Conn.) *Courant*, *Los Angeles Times*, *Orlando Sentinel* (Central Florida), *The* (Baltimore)*Sun*, *The* (Allentown, Pa.) *Morning Call*, (Hampton Roads, Va.) *Daily Press* and *Sun-Sentinel* (South Florida).

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

SUMMARY OF ARGUMENT

In these three cases, two leading communications carriers subject to the Foreign Intelligence Surveillance Act ("FISA") advance their rights under the First Amendment to discuss, in a broad and abstract way, the extent of the government surveillance in which they are compelled to participate by statute and through orders of this Court, while the ACLU and the Media Freedom and Information Access Clinic at Yale Law School seek access to precedential opinions of this Court interpreting those statutes both in their own right and in light of all relevant constitutional safeguards. Civil liberties groups, including the ACLU, have filed a brief

in the Google and Microsoft cases supporting the companies' positions and emphasizing their First Amendment interests as speakers. *See* Brief of First Amendment Coalition et al. as *Amici Curiae* in Support of the Motions for Declaratory Judgment, *In re Motion for Declaratory Judgment of Google Inc.'s First Amendment Right to Publish Aggregate Information About FISA Orders*, *In re Motion To Disclose Aggregate Data Regarding FISA Orders*, Docket Nos. Misc. 13-03, 13-04 (FISA Ct. July 8, 2013).

This coalition of news media organizations writes separately in support of the communications carriers to emphasize a related point that complements the arguments of the carriers and their civil liberties *amici*. In addition to implicating their rights as speakers, the Google and Microsoft cases raise important concerns relating to the interests of the public in receiving information, an interest that the Supreme Court has long recognized as a separate component of the speech and press freedoms under the First Amendment. Where the communications providers are willing speakers, the public has a heightened interest in hearing their speech. That interest is heightened even more when the government is itself choosing to provide information to the public regarding issues central to the Google and Microsoft cases.

The public also has a formidable First Amendment interest in hearing directly from this Court about its core judicial activities in interpreting the statutes that give rise to its jurisdiction. The way the public learns about any tribunal's activities is chiefly through its opinions, and thus the news media coalition also files in support of the request for public access to this Court's interpretations of Section 215 of the Patriot Act that address the meaning, scope, and constitutionality of this law. *See In re Orders Issued by This Court Interpreting Section 215 of the Patriot Act*, Docket No. Misc. 13-02 (FISA Ct.). The mandate to this Court to keep secret the particular government applications filed before it does not require secrecy beyond that

statutory duty, and the interest of the public in understanding how this Court is construing these key congressional enactments is paramount, particularly regarding information in which the interest of the government justifying secrecy is not present.

Excessive secrecy limits truthful reporting on matters of public concern, implicating the highest First Amendment values. These three cases, which share a common purpose of seeking disclosure of truthful information to the public about the FISA warrant application and approval process, come to this Court against the backdrop of an urgent and in many ways delayed debate regarding balancing the nation's commitment to transparency in its public institutions with the demands placed upon those traditions by the professed needs of the national security state. The communications carriers and this Court have both expressed commitment to correcting any misinformation in the public domain about the FISA process and the providers' cooperation with the National Security Agency. Concerns about the impressions created in the public media underscore the real point: The issues here are vitally important to both national security and civil liberties, they inevitably and rightfully are going to be the subject of public reporting and debate, and secrecy is preventing the public and the press from having even the rudimentary information needed for the kind of informed discussion that the country deserves.

The President concluded his remarks during a recent press conference by noting that some people, including members of Congress, will disagree with the FISA surveillance programs and saying, "We're happy to have that debate." *See* The White House, Statement by the President, June 7, 2013, available at http://1.usa.gov/12xerjF. Disclosure of the aggregate data and the judicial opinions interpreting the surveillance statutes requested in these cases would be a modest yet important part of that public debate and a step toward more accountability of the FISA programs passed by Congress and overseen by this Court.

I. The First Amendment interests of the public in hearing a "willing speaker" are particularly strong when the government itself is speaking about secretive national security programs and the disclosure of the data at issue is not forbidden by law.

The Supreme Court has long recognized that the public has a First Amendment right to receive speech where there is a willing speaker. "[W]here a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both." *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976). The *Virginia Pharmacy* Court explained that this precept was "clear from the decided cases," *id.*, including *Klendienst v. Mandel*, 408 U.S. 753, 762–63 (1972), where again the Court referred to a broadly accepted right to "receive information and ideas," and it cited its decision in *Martin v. City of Struthers*, 319 U.S. 141 (1943) that holds:

> The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature, and necessarily protects the right to receive it.

Id. at 143 (internal citations omitted). The Court has further explained that the "right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom." *Bd. of Ed. v. Pico*, 457 U.S. 853, 867 (1982) (Brennan, J., plurality opinion) (emphasis in original). Justice Brennan rooted this concept of the listener's pursuit of his own constitutional liberties in the writings of the author of the First Amendment, James Madison, citing this passage from Madison's letters:

> A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

Id.

In addressing the various rationales for free speech protections – from the search for truth to a check on government power to personal self-realization and liberty – modern scholars of the First Amendment have concluded that these individual models and others all serve to reinforce each other. According to University of Texas Professor Lucas A. Powe, Jr., referring to Yale Professor Thomas Emerson's influential treatise *The System of Free Expression*, "[L]ooking for a single explanation for the importance of freedom of speech is a futile search. Each of the theories has explanatory power. . . . [Thomas] Emerson's great insight, implicit in [Justice] Brandeis's *Whitney* concurrence, was that the whole is stronger than the sum of its parts." Lucas A. Powe, Jr., *The Fourth Estate and the Constitution: Freedom of the Press in America* 240 (University of California Press 1992). The power of the listeners' rights concept is thus derived from the power of speakers wishing to communicate information – and vice versa.

Courts often employ concepts relating to the "right to receive" information from a "willing speaker" when news media parties challenge gag orders and base their standing to intervene on the public's interest in hearing the information. *See Application of Dow Jones & Co., Inc.*, 842 F.2d 603, 607 (2d Cir. 1988) ("But the rights of potential recipients of speech, like the news agencies, to challenge the abridgment of that speech has already been decided.") (citing *Virginia Pharmacy*); *FOCUS v. Allegheny County Court*, 75 F.3d 834, 839 (3d Cir. 1996) (affirming that third parties have standing to challenge gag orders when the subjects of those orders might fear reprisal by speaking out); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994) ("The Newspapers may have standing notwithstanding the fact that they assert rights that may belong to a broad portion of the public at large.") (citations omitted); *Davis v. East Baton Rouge Parish Sch. Bd.*, 78 F.3d 920, 927 (5th Cir. 1996) (holding that because the subject of the gag order was newsworthy and of great public interest in the community, the order

severely impeded efforts "to discover newsworthy information from potential speakers"). These cases illuminate that the media's interest in receiving information about court proceedings in the name of the public's interest is substantial.

Amici draw upon these doctrines to support the applications of Google and Microsoft. They are speakers with significant First Amendment interests who wish to convey to the public generalized data about government surveillance programs in which they are required to play a role based on statute and judicial orders. They have submitted to this Court that disclosure of the information they seek to share with the public is not barred by law and will better explain the nature of their participation in these programs and correct popular misperceptions about the operation of key anti-terrorism initiatives undertaken by the government. Where Google and Microsoft have an interest of constitutional dimension in communicating with the public, the public has a corresponding constitutional interest in receiving the communications in order to fully realize its own speech and political freedoms. *See* Motion for Declaratory Judgment of Google Inc.'s First Amendment Right to Publish Aggregate Information About FISA Orders at 3, *In re Motion for Declaratory Judgment of A First Amendment Right to Publish Aggregate Information About FISA Orders*, Docket No. Misc. 13-03 (FISA Ct. June 18, 2013) ("[T]hese are matters of significant weight and importance, and transparency is critical to advancing public debate in a thoughtful and democratic manner.").

The public interest in disclosure is even more compelling when the government has acknowledged the existence of these surveillance programs and is itself speaking about them. *See ACLU v. CIA*, 710 F.3d 422, 426–27 (D.C. Cir. 2013) (reversing dismissal of a FOIA action against the CIA because the government's public acknowledgement of a drone strike program vitiated the CIA's claim that it could not disclose its interest or involvement in the program).

The government's own speech amplifies the First Amendment interests of affected speakers seeking to communicate a message flowing directly from an official acknowledgement of a government program. If the public is hearing from the government, it should be hearing from the providers. Google and Microsoft should not be barred from confirming through the release of aggregate data the extent to which they have been subject to the demands of these programs when their communications will not implicate the confidentiality of any particular case.

Statements by President Obama and the Director of National Intelligence, James R. Clapper, among others, acknowledge continuing government programs to retrieve both telephone toll and email envelope information. *See* The White House, Statement by the President, June 7, 2013, available at http://1.usa.gov/12xerjF; Director of National Intelligence, Facts on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, June 8, 2013, available at http://1.usa.gov/1bhNPkX; *see also* http://www.dni.gov/index.php/newsroom/press-releases ("DNI Statement on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act," June 8, 2013; "DNI Statement on Activities Authorized Under Section 702 of FISA," June 6, 2013; "DNI Statement on Recent Unauthorized Disclosures of Classified Information," June 6, 2013). Of course, the administration has not acknowledged any particular FISA warrant. But it has discussed the various surveillance programs with enough detail to argue that the programs are not invading the privacy of American citizens.

Disclosure of the aggregate data is necessary to understanding the administration's position – as well as the positions of Google and Microsoft. When two of the most knowledgeable officials possessing intelligence information declare that the surveillance programs do not violate the privacy of members of the public, two of the most ostensibly

affected companies which must comply with the surveillance orders should be free to talk about them at least in the most general ways. *See* Microsoft Corporation's Motion for Declaratory Judgment or Other Appropriate Relief Authorizing Disclosure of Aggregate Data Regarding Any FISA Orders It Has Received at 7, *In re Motion to Disclose Aggregate Data Regarding FISA Orders*, Docket No. Misc. 13-04 (FISA Ct. June 19, 2013) ("The First Amendment does not permit the Government to bar Microsoft from speaking about an issue of great importance to its customers, shareholders, and the public while, simultaneously, senior Government officials are speaking publicly about the very same subject."). Google and Microsoft have First Amendment interests in speaking to these issues through the release of aggregate data, and the interests of the public in hearing about all sides of these issues strongly supports their petitions.

II. A profound and growing public interest exists in access to the precedential opinions of this Court the disclosure of which will strengthen this tribunal's legitimacy.

Amici support the efforts of the ACLU and the Media Freedom and Information Access Clinic at Yale Law School for public access to opinions of this Court under *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*"Press-Enterprise II"*) as well as through the Court's own rules. *See* FISC R.P. 62 (establishing procedure for publication of court opinions *sua sponte* or through the motion of a party). While the constitutional grounds for access are persuasively argued in the ACLU's brief, the news media *amici* file to highlight additional factors relating to the Court's institutional interests and the interplay between the public, the Court, and the press that makes reliance on Rule 62's practices compelling in this case.

A "watershed" moment for the interests of the public in receiving information, in Justice Stevens' words, arrived when the Supreme Court applied the listeners' rights model to the question of access to court proceedings. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 582 (1980) (Stevens, J., concurring). In *Richmond Newspapers*, the Court recognized a

right based in the First Amendment that created a presumption of open criminal trials. *See id.* at 573. While Justice Stevens wrote to emphasize that the holding was significant in part because it found that the "acquisition of newsworthy matter" was entitled to its own basis for constitutional protection, *id.* at 582, other Justices stressed the role that openness plays in legitimizing the criminal justice system itself. *See id.* at 572 (Burger, C.J., plurality opinion) ("[T]he appearance of justice can best be provided by allowing people to observe it."); *id.* at 600 (Stewart, J., concurring) ("[A] trial courtroom is a place where representatives of the press and of the public are not only free to be, but where their presence serves to assure the integrity of what goes on.").

The news media of course plays its own democratic role by ensuring that newsworthy information reaches the public about each of the three branches of government. *See United States* v. *Morison*, 844 F.2d 1057, 1081 (4th Cir. 1988) (Wilkinson, J., concurring) ("We have placed our faith in knowledge, not in ignorance, and for most, this means reliance on the press."). The Supreme Court has signaled the special significance of the news media's role in the area of access to judicial proceedings:

> Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government . . . . Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to . . . bring to bear the beneficial effects of public scrutiny upon the administration of justice.

Cox Broad. Corp. v. Cohn, 420 U.S. 469, 491–92 (1975).

As the ACLU and the Yale clinic explain, the judiciary, as a separate and co-equal branch of government, is invested in the recognition of public access rights to judicial proceedings for its own institutional reasons as well. *See* Reply Brief In Support Of Motion of the American Civil Liberties Union, et al., For The Release Of Court Records at 11, *In re Orders Issued by*

This Court Interpreting Section 215 of the Patriot Act, Docket No. Misc. 13-02 (FISA Ct. July 12, 2013) ("In particular, access 'enhances the quality and safeguards the integrity' of courts, while at the same time 'foster[ing] an appearance of fairness, thereby heightening public respect for the judicial process.'") (citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982)). While these institutional interests are prevalent throughout the judiciary, from trial courts all the way to the U.S. Supreme Court, they may be even more pronounced in the FISA Court "than in other tribunals" for reasons ranging from the secretive nature of its adjudications to the lack of any adversarial process. *Id.* Thus, for this Court in particular, a connection exists between transparency into its development of a controlling body of law and public confidence in its expanding (and secretive) judicial functions. As the Second Circuit articulated:

> Because the Constitution grants the judiciary "neither force nor will, but merely judgment," The Federalist No. 78 (Alexander Hamilton), courts must impede scrutiny of the exercise of that judgment only in the rarest of circumstances. This is especially so when a judicial decision accedes to the requests of a coordinate branch, lest ignorance of the basis for the decision cause the public to doubt that "complete independence of the courts of justice [which] is peculiarly essential in a limited Constitution." *Id.*

United States v. Aref, 533 F.3d 72, 83 (2d Cir. 2008).

There is another nexus here as well – the nexus between the judiciary's promotion of freedom of the press and judicial independence itself. In *Images of A Free Press*, Lee Bollinger writes of the "special bond" between the Supreme Court and the press in years since the Court constitutionalized the law of libel in *New York Times v. Sullivan*, 376 U.S. 254 (1964). For Bollinger, now president of Columbia University, the *Sullivan* decision showed the Court "eager to take on the role of constitutional advocate for, as well as protector of, the press" not just to advance the public's constitutional interests in a free press but for the judiciary's own sake as well. Lee Bollinger, *Images of A Free Press* 52 (University of Chicago Press 1994). In

elaborating on the "sense of solidarity" between the courts and the news media, Bollinger states:

> Something in the identities of both institutions may lead naturally to such a bond. They share the condition of standing, as it were, on the margin of society. Both function as social critics. Neither possesses the powers of enforcement held by the legislative and executive branches. . . . They exist in the ever-awkward position of having a grand role to perform without being electorally authorized, democratically legitimated, to perform that role.

Id.

As the public's legitimate demands grow for more information about the judiciary's role in administering the country's surveillance programs, the institutional needs of this Court to explain its functions and the interests of the news media in keeping the public informed will inevitably be linked in the way Bollinger envisioned. Several former members of this Court have spoken out recently to defend their independence as FISA judges and to advance the cause of greater understanding of FISA proceedings. *See* Carol D. Leonnig et al., *Secret-Court Judges Upset at Portrayal of "Collaboration" with Government*, Wash. Post, June 30, 2013 at A1, available at http://wapo.st/17KTAeS; Stephen Braun, *Former FISA Judge Says Secret Court Is Flawed*, Associated Press, July 9, 2013, available at http://bigstory.ap.org/article/oversight-board-hears-testimony-nsa-spying. This Court itself last month issued a statement to the news media to defend the integrity of FISA procedures. *See* John Shiffman & Kristina Cooke, *The Judges Who Preside Over America's Secret Court*, Reuters, June 21, 2013, available at http://reut.rs/19mopUi.

When this Court's opinions become available, it can be sure that the media will be there to explain its work to the public. *See* Philip Shenon, *Secret Court Says F.B.I. Aides Misled Judges in 75 Cases*, N.Y. Times, Aug. 23, 2002, available at http://nyti.ms/13KNMR5 (reporting on a publicly released FISA Court opinion in which the Court criticized the FBI for making

misleading statements in numerous applications for wiretaps). In the meantime, the news media is doing its part to shed more light on the FISA process and the expansion of this Court's docket and jurisprudential responsibilities. *See* Eric Lichtblau, *In Secret, Court Vastly Broadens Powers of N.S.A.,* N.Y. Times, July 6, 2013, at A1, available at http://nyti.ms/12beiA3; Jennifer Valentino-Devries & Siobhan Gorman, *Secret Court's Redefinition of 'Relevant' Empowered Vast NSA Data-Gathering,* Wall St. J., July 8, 2013, available at http://on.wsj.com/13x8QKU.

The best language promoting the values of transparency and the benefits to judicial autonomy of openness comes from judges themselves. *See* Hon. T.S. Ellis III, *Sealing, Judicial Transparency and Judicial Independence*, 53 Vill. L. Rev. 939, 948 (2008) ("[S]ecrecy encourages a perception of abuse, which in turn erodes public confidence in judicial institutions and ultimately will lead to attacks on, and erosion of, judicial independence."); *Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 348 (7th Cir. 2006) (Easterbrook, J.) ("The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat and requires rigorous justification. . . . The Supreme Court issues public opinions in all cases, even those said to involve state secrets."). Publication of leading authoritative opinions under FISC R.P. 62 would both educate the public about the business of this Court and in the process protect its independence as an Article III tribunal.

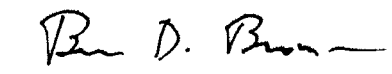
CONCLUSION

For the reasons stated above, the petitions in Case Nos. Misc. 13-02, Misc. 13-03, and Misc. 13-04 should be granted.

* * *

Pursuant to FISC R.P. 7(h)(1), attorneys for *amici curiae* certify that Bruce D. Brown is a member in good standing of the bar of the Commonwealth of Massachusetts (#629541) and the District of Columbia (#457317); that Gregg P. Leslie is a member in good standing of the bar of the District of Columbia (#426092); and that Robert J. Tricchinelli is a member in good standing of the bar of the State of Maryland. Pursuant to FISC R.P. 7(i), attorneys for *amici* further certify that the undersigned do not currently hold a security clearance.

Respectfully submitted,



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