

**No. 19-15473**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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WP COMPANY LLC, dba THE WASHINGTON POST,

*Movant-Appellant,*

AMERICAN CIVIL LIBERTIES UNION FOUNDATION,  
ELECTRONIC FRONTIER FOUNDATION, et al.

*Movants-Appellants*

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.

*Real Party in Interest-Appellee.*

On Appeal from the United States District Court  
for the Eastern District of California  
Misc. Case No. 1:18-mc-00057-LJO-EPG  
Hon. Lawrence J. O'Neill

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**APPELLANT'S EXCERPTS OF RECORD**

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19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA  
21 FRESNO DIVISION

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

Misc. Case No. 1:18-mc-00057-LJO-EPG  
Related Case No.: 1:18-cr-00207-LJO-SLO  
(*USA v. Denis Barrera-Palma et al.*)

**NOTICE OF APPEAL**

27 **NOTICE IS HEREBY GIVEN** that Movant WP Company LLC, *dba The Washington*  
28 *Post*, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the  
Judgment entered in this action on February 11, 2019, *see* ECF No. 26, denying Movant's  
Motion to Unseal (ECF No. 3).

Dated: March 13, 2019

**JASSY VICK CAROLAN LLP**

By:     /s/ Duffy Carolan      
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15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

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IN RE MOTION TO COMPEL FACEBOOK TO PROVIDE TECHNICAL ASSISTANCE IN SEALED CASE, OPINION AND ORDER ISSUED IN OR ABOUT SEPTEMBER 2018
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Misc. Case No. 1:18-mc-00057-LJO-EPG

**ECF Case**

**Notice of Appeal**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN** that Movants American Civil Liberties Union,  
American Civil Liberties Union Foundation, American Civil Liberties Union of Northern  
California, American Civil Liberties Union Foundation of Northern California, Electronic  
Frontier Foundation, and Riana Pfefferkorn hereby appeal to the United States Court of Appeals  
for the Ninth Circuit from the Judgment entered in this action on February 11, 2019, *see* ECF  
No. 26, denying Movants' motion to unseal (ECF No. 1).



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Respectfully submitted,

Dated: March 8, 2019

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**UNITED STATES DISTRICT COURT  
FOR THE 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**

**Misc. Case No. 1:18-mc-00057-LJO-EPG**

**ORDER DENYING MOTIONS TO  
UNSEAL (ECF Nos. 1 & 3); ORDER TO  
SEAL RESPONSIVE FILINGS**

**I. BACKGROUND AND ISSUES**

On November 28, 2018, Applicants American Civil Liberties Foundation (“ACLU”) and W.P. Company LLC, dba The Washington Post, filed applications for the Court to unseal its court ruling pertaining to the U.S. Department of Justice (“DOJ”) and Facebook, Inc (“Facebook”).

On February 7, 2018, both DOJ and Facebook filed responses to the pending applications. Due to the substantive nature of the responses that parallel the reasons the proceedings were sealed in the first instance, both of their requests to allow the sealing of those responses are hereby GRANTED.

The original motions, requests, substantive documents in support and in opposition, evidentiary hearing, and resulting Court Order of Decision were closed and sealed, upon motion and request, because the Court determined and made findings that:

1. The Government’s assertion that disclosure of the legal materials, testimony, and ultimate Order would jeopardize both the then-current and subsequent criminal investigations of

1 future cases (both categories involving and emanating from Title III wiretap processes)  
2 was a valid and legitimate factual and legal concern; and

- 3 2. Facebook's assertion that its internal processes that were the subject of the Government's  
4 motion constituted trademark and protected material and information, and that public  
5 disclosure would provide such protected information to competitors, thereby jeopardizing  
6 substantial business quality, productivity, and profit, was legitimate, true, and reasonable.

7 The Government opposes the instant requests to unseal. Facebook supports the requests on the  
8 condition that any disclosed materials be subject to limited redaction.

9 The issues raised by the requests to unseal are:

- 10 • whether the public has First Amendment and common law rights of access to the court  
11 records sought; and  
12 • if so, whether the Government has articulated compelling reasons that outweigh the public's  
13 right of access.

## 14 **II. DISCUSSION**

15 The Court recognizes that Applicants are handicapped in their argument due to their almost non-  
16 existent factual knowledge. The Court, however, also understands that to provide Applicants with the  
17 information that would allow them to be convinced of the need to seal would swallow the very issues  
18 that resulted in the closed hearing and sealing of records. That said, the statutory presumption against  
19 Title III materials is not as narrow as Applicants claim, especially under the instant factual scenario.

20 There can be no dispute that the requested materials contain and pertain to sensitive wiretap information  
21 that implicates directly the very purpose of the Title III statutory scheme of nondisclosure. *See* 18 U.S.C.  
22 §§ 2517, 2518. Trying to separate that information from any non-covered material is simply impossible.

23 The unsealing and disclosure of Title III is governed by a comprehensive statutory scheme that  
24 establishes a presumption against disclosure. Title III prohibits all disclosures not authorized by statute.  
25 18 U.S.C. §§ 2517(1)-(8). The purpose of Title III, including the provisions governing disclosure of

1 wiretap materials, makes it clear that Congress intended such material to remain confidential and  
2 “clearly negate(s) a presumption in favor of disclosure.” *In Re the Matter of the Application of the New*  
3 *York Times Co.*, 577 F.3d 401, 408-10 (2nd Cir. 2009); *see also United States v. Kwok Cheung Chow*,  
4 No. 14-CR-00196 CRB JCS, 2015 WL 5094744, at \*3 (N.D. Cal. Aug. 28, 2015).

5 All of the materials Applicants seek are Title III wiretap materials that directly flow from orders  
6 granting Title III wiretap requests. Therefore, this Court cannot ignore the statutory language that  
7 protects the confidentiality of these materials. In attempting to determine whether such materials are  
8 subject to a First Amendment right of access, a Court must determine whether this type of  
9 information/proceeding has traditionally been conducted in an open fashion, and whether public access  
10 to the information/proceeding would serve to curb prosecutorial and/or judicial misconduct or would  
11 further the public’s interest in understanding the criminal justice system. *Oregonian Publ’g Co. v U.S.*  
12 *Dist. Court for Dist. Of Oregon*, 920 F.2d 1462, 1465 (9th Cir. 1990). “This two-part test is commonly  
13 referred to as the ‘experience and logic’ test.” *United States v. Doe*, 870 F.3d 991, 997 (9th Cir. 2017).  
14 “Even when the experience and logic test is satisfied, however, the public’s First Amendment right of  
15 access establishes only a strong presumption of openness, and the public still can be denied access if  
16 closure is necessitated by a compelling governmental interest, and is narrowly tailored to serve that  
17 interest.” *Id.* (internal quotation omitted); *see also Chow*, 2015 WL 5094744, at \*2 (applying experience  
18 and logic test to materials covered by Title III).

19 Here, following the reasoning set forth in *N.Y. Times*, 577 F.3d at 410, the Court agrees with the  
20 Government that: (a) under the history-and-logic test, Title III wiretap materials are generally not  
21 subject to disclosure because there is no historical tradition of open access to Title III proceedings; and  
22 (b) Applicants have failed to present any basis upon which this Court could adopt their view that public  
23 policy favors public involvement in matters such as those presented here over Congress’ preferred  
24 public policy as expressed in Title III itself. *See also United States v. Blagojevich*, 662 F. Supp. 2d 998,  
25 1004 (N.D. Ill. 2009) (finding “no historical tradition of open public access to Title III materials” and

1 rejecting public policy arguments that contradict Congress' concern for confidentiality and privacy  
2 reflected in the text and legislative history of Title III). Accordingly, no qualified First Amendment right  
3 of access attaches to the materials/procedures sought.

4 Even if the qualified right did attach, the compelling interest of the DOJ to preserve the secrecy  
5 of law enforcement techniques in Title III wiretap cases overwhelms that qualified right. The materials  
6 at issue in this case concern techniques that, if disclosed publicly, would compromise law enforcement  
7 efforts in many, if not all, future wiretap investigations. In addition, in the instant case, the investigation  
8 is ongoing. *See In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 293 (4th  
9 Cir. 2013) (agreeing that government's interests in maintaining the secrecy of its investigation,  
10 preventing potential subjects from being tipped off, or altering behavior to thwart an ongoing  
11 investigation, outweighed public interest in disclosure of materials covered by the Stored  
12 Communications Act). Disclosure under these circumstances is exactly what the relevant statutory  
13 provisions attempt to preclude.

14 Redaction of sensitive information is not a viable option here, as sensitive investigatory  
15 information is so thoroughly intertwined with the legal and factual arguments in the record such that  
16 redaction would leave little and/or misleading substantive information. In sum, the requested material is  
17 so entangled with investigatory secrets that effective redaction is not possible.

18 The Court also finds that the common law right of access does not attach to the materials  
19 requested. *See Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir. 1989) ("there is no right  
20 of access to documents which have traditionally been kept secret for important policy reasons"). Title  
21 III supersedes any arguable common law right. *N.Y. Times*, 577 F.3d at 405.

22 The important policy reasons to preserve the secrecy of the Title III criminal investigation are  
23 present and remain intact in this case. The interests of the public are outweighed in favor of non-  
24 disclosure based on the relevant facts and circumstances here. After balancing these interests as required  
25 under *United States v. Bus. of Custer Battlefield Museum & Store Located at Interstate 90, Exit 514, S.*

1 of *Billings, Mont.*, 658 F.3d 1188, 1192 (9th Cir. 2011), the Applications for disclosure fall short and are  
2 therefore DENIED.

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4 IT IS SO ORDERED.

5 Dated: February 11, 2019

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

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**UNITED STATES DISTRICT COURT  
FOR THE 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**

**Misc. Case No. 1:18-mc-00057-LJO-EPG  
SCHEDULING ORDER RE MOTIONS  
TO UNSEAL**

The Court has received two formal requests to unseal court documents. Due to the press of cases that have time-precedent (all) and constitutional-precedent (some) over the just-filed requests, coupled with their being neither factual nor legal urgency, the Court has only quickly perused the requests. The quick perusal by the Court indicates that the Department of Justice and Facebook have been singled out factually. The Court, therefore, **ORDERS** the Clerk of the Court to provide the just-filed requests to both entities forthwith.

Should either or both of the entities wish to be heard in written form, they must file whatever documents they wish the Court to consider on or before January 7, 2019. As soon as the Court is able to review not only the filed requests, but also any documents filed by either the Department of Justice and/or Facebook, it shall respond in an appropriate fashion.

IT IS SO ORDERED.

Dated: November 29, 2018

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

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**From:** caed\_cmecf\_helpdesk@caed.uscourts.gov  
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**Subject:** Activity in Case 1:18-mc-00057-LJO-EPG In Re U.S. Department of Justice Order.

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**U.S. District Court**

**Eastern District of California - Live System**

### **Notice of Electronic Filing**

The following transaction was entered on 12/20/2018 at 4:50 PM PST and filed on 12/20/2018

**Case Name:** In Re U.S. Department of Justice

**Case Number:** [1:18-mc-00057-LJO-EPG](#)

**Filer:**

**Document Number:** [7](#)

**Docket Text:**

**ORDER Granting Motion to Extend the Time to File Responses to the Motions to Unseal. ( Responses due by 2/7/2019.) Signed by Chief Judge Lawrence J. O'Neill on 12/20/18. (Robles, S)**

**1:18-mc-00057-LJO-EPG Notice has been electronically mailed to:**

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Jennifer S. Granick jgranick@aclu.org, bkaufman@aclu.org, nmorrow@aclu.org

**1:18-mc-00057-LJO-EPG Electronically filed documents must be served conventionally by the filer to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=12/20/2018] [FileNumber=9770445-0] [155b9c9208b2128127c04bdb2d8b61da0aaed10a738f1f852c5748a0769611aa334571ee26abc81d2f0e21b0094211bc76793bbf788137da4c9eda5095d37394]]



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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 APPROVING DOCUMENTS 13, 14, 15,  
16, 17, AND 17-1 FOR FILING UNDER SEAL

IT IS HEREBY ORDERED that pursuant to Local Rule 141, Documents 13, 14, 15, 16, 17, and 17-1 are approved for filing under seal *ex parte* until further order of the Court.

IT IS SO ORDERED.

Dated: February 11, 2019

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

# EXHIBIT 1

General Docket  
United States Court of Appeals for the Ninth Circuit

<b>Court of Appeals Docket #:</b> 02-15635 <b>Nature of Suit:</b> 2890 Other Statutory Actions IN THE MATTER OF, et al <b>Appeal From:</b> U.S. District Court for Nevada, Las Vegas <b>Fee Status:</b> Paid	<b>Docketed:</b> 04/03/2002 <b>Termed:</b> 11/18/2003
<b>Case Type Information:</b> 1) civil 2) united states 3) null	
<b>Originating Court Information:</b> <b>District:</b> 0978-2 : <a href="#">CV-01-01495-LDG</a> <b>Trial Judge:</b> Lloyd D. George, Senior District Judge <b>Date Filed:</b> 12/19/2001 <b>Date Order/Judgment:</b> 03/13/2002 <b>Date NOA Filed:</b> 03/20/2002	
<b>Prior Cases:</b> None	
<b>Current Cases:</b> None	

In re: IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE ROVING INTERCEPTION OF ORAL COMMUNICATIONS

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In re: IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE ROVING INTERCEPTION OF ORAL COMMUNICATIONS,

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THE COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

- 04/03/2002  1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no. setting schedule as follows: appellant's designation of RT is due 4/1/02; appellee's designation of RT is due 4/9/02; appellant shall order transcript by 4/19/02; court reporter shall file transcript in DC by 5/20/02; certificate of record shall be filed by 5/28/02 ; appellant's opening brief is due 7/8/02; appellees' brief is due 8/5/02; appellants' reply brief is due 8/19/02; [02-15635] APPEAL UNDER SEAL (CW) [Entered: 04/03/2002 10:47 AM]
- 04/03/2002  2 Filed attorney for Appellant Civil Appeals Docketing Statement served on 3/20/02 (to CONFATT) [02-15635] [02-15635] (CW) [Entered: 04/03/2002 10:50 AM]
- 06/06/2002  3 Case rejected from Circuit Mediation Program. (SA) [Entered: 06/07/2002 09:49 AM]
- 06/24/2002  4 14 day oral extension by phone of time to file Appellant brief. [02-15635] appellants' brief due 7/22/02; appellees' brief due 8/21/02; the optional reply brief is due 14 days from service of the answering brief. (CG) [Entered: 06/24/2002 01:45 PM]
- 07/22/2002  5 Filed original and 15 copies Appellant's opening brief ( Informal: n ) 37 pages and five excerpts of record in 1 volume served on 7/19/02 BRIEF AND EXCERPTS ARE FILED UNDER SEAL (Sealed brief also on 3 1/2" diskette) [02-15635] (GR) [Entered: 07/23/2002 09:10 AM]
- 08/19/2002  6 14 day oral extension by phone of time to file Appellee USA's brief. [02-15635] appellees' brief due 9/4/02; appellants' reply brief due 14 days fr svc of asn br. (XX) [Entered: 08/19/2002 10:37 AM]
- 09/06/2002  7 Received letter from Appellant re calendaring of case, requesting ct not to sched argument for 1/2/03 thru 1/31/03. CALENDAR . [02-15635] (GR) [Entered: 09/06/2002 04:56 PM]
- 09/09/2002  8 Filed original and 15 copies appellee USA's 41 pages brief, 5 suppl Exc. in 1 vol: ; served on 9/4/02 BRIEF AND EXCERPTS FILED UNDER SEAL [02-15635] (GR) [Entered: 09/09/2002 01:59 PM]
- 09/24/2002  10 Filed original and 15 copies Appellant's reply brief, ( Informal: n ) 17 pages; served on 9/23/02 BRIEF IS FILED UNDER SEAL [02-15635] (GR) [Entered: 09/24/2002 03:10 PM]
- 09/27/2002  12 Calendar check performed [02-15635] (MW) [Entered: 09/27/2002 08:16 AM]
- 09/30/2002  14 Calendar materials being prepared. [02-15635] [02-15635] (MW) [Entered: 09/30/2002 11:35 AM]
- 10/02/2002  15 CALENDARED: SAN FRAN Dec 2 2002 9:00 am Courtroom 4 [02-15635] (AW) [Entered: 10/02/2002 12:41 PM]
- 11/18/2002  17 FILED CERTIFIED RECORD ON APPEAL: 1 SEALED CLERK'S RECORD & 2 SEALED REPORTER'S TRANSCRIPTS.(ORIGINAL) [02-15635] (SD) [Entered: 11/18/2002 02:18 PM]
- 11/29/2002  18 FILED SUPPLEMENT TO CERTIFIED RECORD ON APPEAL: SEVERAL PHOTO COPIES OF SEALED DOCUMENTS. (COPIES) [02-15635] (Sefarian, Steve) [Entered: 11/29/2002 01:45 PM]
- 12/02/2002  19 ARGUED AND SUBMITTED TO John T. NOONAN, Marsha S. BERZON, Richard C. TALLMAN [02-15635] Tape recorded proceedings ordered SEALED. Release to counsel for parties. (BJK) [Entered: 12/02/2002 01:52 PM]
- 12/04/2002  21 Filed order ( John T. NOONAN, Marsha S. BERZON, Richard C. TALLMAN, ): The ct orders that the tape recorded oral argument on 12/2/02 be maintained under seal. Distribution of copies shall be limited to counsel for parties. Counsel shall not disclose the contents nor furnish copies to 3rd parties. [02-15635] (GR) [Entered: 12/04/2002 08:35 AM]
- 09/23/2003  25 Filed order ( John T. NOONAN, Marsha S. BERZON, Richard C. TALLMAN, ): Appellant's name shall be removed from all further documentation in this sealed matter, including the caption page of any forthcoming disposition, and from the court docket. Appellant shall henceforth referred to only as "The Company". UNDER SEAL [02-15635] (GR) [Entered: 09/23/2003 10:08 AM]
- 09/23/2003  26 Filed order ( John T. NOONAN, Marsha S. BERZON, Richard C. TALLMAN, ): As this case was litgated under seal, we have drafted the opinion with secrecy concerns in mind, redacting all identifying information of which we were aware. We are as a courtesy pre-circulating only to the parties a tentative draft of the opinion, under seal, for review prior to publication. The parties are invited to comment on any security concerns or to submit further proposed redactions within 10 days of the date of this order by filing, under seal, simultaneous letter briefs of not more than 10 pages. These briefs shall be served on opposing counsel and the court by overnight delivery service. The briefs filed in response to this order may not include any comments on the substance of the opinion. The parties will have the usual opportunity to file petitions for rehearing and rehearing en banc after the opinion has been filed and published. If any party files substantive comments with the court in response to this order, the entirety of their briefs, including comments related to secrecy issues, will not be accepted for filing. UNDER SEAL [02-15635] (GR) [Entered: 09/23/2003 10:16 AM]
- 10/08/2003  27 Filed UNDER SEAL original and 3 copies Appellant The Company's supplemental letter brief of 2 pages; exhibits; served on 10/6/03 (fedex to PANEL) [02-15635] (Hom, Howard) [Entered: 10/08/2003 02:58 PM]
- 11/18/2003  29 FILED OPINION: REVERSED ( Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. John T. NOONAN; Marsha S. BERZON, author; Richard C. TALLMAN, dissenting. ) FILED AND ENTERED JUDGMENT. [02-15635] (GR) [Entered: 11/18/2003 10:32 AM]
- 12/02/2003  30

- Filed Appellant The Company bill of costs, served on 12/1/03. TOTAL: \$426.80 [02-15635] (GR) [Entered: 12/02/2003 10:21 AM]
- 12/05/2003  32 Filed Appellee USA, Appellant The Company's motion to extend time to file petition for rehearing until 2/2/04 [02-15635] served on 12/4/03 [4914370] MOTION FILED UNDER SEAL. FAXED TO JUDGE BERZON (GR) [Entered: 12/05/2003 11:42 AM]
- 12/10/2003  34 Filed order ( Marsha S. BERZON, ): granting joint motion to extend time to file a petition for rehearing [32] petition for rehearing due 2/2/04. [02-15635] (GR) [Entered: 12/10/2003 04:09 PM]
- 02/02/2004  35 [4963561] Filed original and 50 copies Appellant The Company petition for panel rehearing and petition for rehearing en banc 16 p.pages, served on 1/30/04 FILED UNDER SEAL PANEL AND ALL ACTIVE JUDGES [02-15635] (GR) [Entered: 02/02/2004 11:05 AM]
- 02/13/2004  36 Filed Appellant The Company's motion to withdraw apt's petition for rhrng [02-15635] served on 2/12/04 [4975879] MOTION FILED UNDER SEAL. PANEL [02-15635] (GR) [Entered: 02/13/2004 11:47 AM]
- 02/19/2004  38 Filed order (John T. NOONAN, Marsha S. BERZON, Richard C. TALLMAN): The sealed motion to withdraw appellant's petition for rehearing is GRANTED. [36] [02-15635] (SM) [Entered: 02/19/2004 09:44 AM]
- 02/19/2004  39 MANDATE ISSUED; COSTS TAXED in the amount of \$426.80. [02-15635] (SM) [Entered: 02/19/2004 10:15 AM]
- 08/23/2004  42 RECORD RETURNED. (1 clerk's record, 2 reporter's transcripts.) (Kwong, Johnny) [Entered: 08/23/2004 09:12 AM]

# EXHIBIT 2

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN THE MATTER OF: Application of the  
United States for an Order Authorizing the  
Roving Interception of Oral Communication.


2:01-cv-01495-LDG  
**ORDER TO UNSEAL FILE**

No objections have been filed to the unsealing of the docketed materials in this case.

Accordingly,

THE COURT HEREBY ORDERS the UNSEALING of the docketed materials in this case.

DATED this 11 day of December, 2007.

  
Lloyd D. George  
United States District Judge



APPEAL

**U.S. District Court  
Eastern District of California - Live System (Fresno)  
CIVIL DOCKET FOR CASE #: 1:18-mc-00057-LJO-EPG**

In Re U.S. Department of Justice  
Assigned to: Chief Judge Lawrence J. O'Neill  
Referred to: Magistrate Judge Erica P. Grosjean  
Case in other court: USCA, 19-15472  
Cause: Civil Miscellaneous Case

Date Filed: 11/28/2018  
Jury Demand: None  
Nature of Suit: 540 Mandamus & Other  
Jurisdiction: Federal Question

**In Re**

**U.S. Department of Justice**

represented by **Jeffrey S. Pollak**  
U.S. Department of Justice  
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*ATTORNEY TO BE NOTICED*

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**In Re**

**Facebook**

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**Movant**

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Foundation**

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**Movant**

**American Civil Liberties Union of  
Northern California**

represented by **Jennifer S. Granick**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**Electronic Frontier Foundation**

represented by **Jennifer S. Granick**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**Riana Pfefferkorn**

represented by **Jennifer S. Granick**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**WP Company LLC, dba The  
Washington Post**

represented by **Duffy Carolan**  
Jassy Vick Carolan LLP

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Email: dcarolan@jassylvick.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
11/28/2018	<a href="#">1</a>	MOTION Motion to Unseal by American Civil Liberties Union Foundation, American Civil Liberties Union of Northern California, Electronic Frontier Foundation, Riana Pfefferkorn. Attorney Granick, Jennifer S. added. (Attachments: # <a href="#">1</a> Proposed Order)(Granick, Jennifer) (Entered: 11/28/2018)
11/28/2018		RECEIPT number 0972-7989938 for \$47.00 paid by Jennifer Granick on 11/28/2018. (Marrujo, C) (Entered: 11/28/2018)
11/28/2018		NEW MISCELLANEOUS CASE FILED. (Lundstrom, T) (Entered: 11/28/2018)
11/28/2018	2	CLERK'S NOTICE (Text Only): This case has been assigned to Chief Judge Lawrence J. O'Neill and Magistrate Judge Erica P. Grosjean. The new case number is 1:18-mc-00057-LJO-EPG. (Lundstrom, T) (Entered: 11/28/2018)
11/28/2018	<a href="#">3</a>	MOTION to unseal court records by WP Company LLC, dba The Washington Post. Attorney Carolan, Duffy added. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Carolan, Duffy) (Entered: 11/28/2018)
11/29/2018	<a href="#">4</a>	SCHEDULING ORDER RE MOTIONS TO UNSEAL signed by Chief Judge Lawrence J. O'Neill on November 29, 2018. (Munoz, I) (Entered: 11/29/2018)
12/20/2018	<a href="#">5</a>	SEALED EVENT (Robles, S) (Entered: 12/20/2018)
12/20/2018	<a href="#">6</a>	SEALED EVENT (Robles, S) (Entered: 12/20/2018)
12/20/2018	<a href="#">7</a>	SEALED EVENT (Robles, S) (Entered: 12/20/2018)
02/07/2019	<a href="#">8</a>	NOTICE of APPEARANCE by Kimberly A. Sanchez on behalf of U.S. Department of Justice. Attorney Sanchez, Kimberly A. added. (Sanchez, Kimberly) (Entered: 02/07/2019)
02/07/2019	<a href="#">9</a>	NOTICE of APPEARANCE by Kimberly A. Sanchez on behalf of U.S. Department of Justice. (Sanchez, Kimberly) (Entered: 02/07/2019)
02/07/2019	<a href="#">10</a>	NOTICE of APPEARANCE by Benjamin B. Wagner on behalf of Facebook. Attorney Wagner, Benjamin B. added. (Wagner, Benjamin) (Entered: 02/07/2019)
02/07/2019	<a href="#">11</a>	NOTICE of APPEARANCE by Martie P. Kutscher on behalf of Facebook. Attorney Kutscher, Martie P. added. (Kutscher, Martie) (Entered: 02/07/2019)
02/07/2019	<a href="#">13</a>	SEALED EVENT (Robles, S) (Entered: 02/08/2019)

02/07/2019	<a href="#">14</a>	SEALED EVENT (Robles, S) (Entered: 02/08/2019)
02/07/2019	<a href="#">15</a>	SEALED EVENT (Robles, S) (Entered: 02/08/2019)
02/07/2019	<a href="#">16</a>	SEALED EVENT (Robles, S) (Entered: 02/08/2019)
02/07/2019	<a href="#">17</a>	SEALED EVENT (Attachments: # <a href="#">1</a> sealed document) (Robles, S) (Entered: 02/08/2019)
02/08/2019	<a href="#">12</a>	NOTICE of APPEARANCE by Robert E. Dunn on behalf of Facebook. Attorney Dunn, Robert E. added. (Dunn, Robert) (Entered: 02/08/2019)
02/08/2019	<a href="#">18</a>	SEALED EVENT (Hellings, J) (Entered: 02/08/2019)
02/08/2019	<a href="#">19</a>	SEALED EVENT (Hellings, J) (Entered: 02/08/2019)
02/11/2019	<a href="#">20</a>	SEALED EVENT (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">21</a>	SEALED EVENT (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">22</a>	ORDER Approving documents for filing under seal. (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">23</a>	SEALED EVENT (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">24</a>	ORDER Approving documents for filing under seal. (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">25</a>	SEALED EVENT (Hellings, J) (Entered: 02/11/2019)
02/11/2019	<a href="#">26</a>	ORDER DENYING MOTIONS TO UNSEAL (ECF Nos. 1 & 3); ORDER TO SEAL RESPONSIVE FILINGS signed by Chief Judge Lawrence J. O'Neill on February 11, 2019. (Munoz, I) (Entered: 02/11/2019)
03/08/2019	<a href="#">27</a>	NOTICE of APPEAL by American Civil Liberties Union Foundation, American Civil Liberties Union of Northern California, Electronic Frontier Foundation, Riana Pfefferkorn as to <a href="#">26</a> Order on Motion for Miscellaneous Relief,. (Filing fee \$ 505, receipt number 0972-8150474) (Granick, Jennifer) (Entered: 03/08/2019)
03/11/2019	<a href="#">28</a>	APPEAL PROCESSED to Ninth Circuit re <a href="#">27</a> Notice of Appeal, filed by Electronic Frontier Foundation, American Civil Liberties Union Foundation, Riana Pfefferkorn, American Civil Liberties Union of Northern California. Notice of Appeal filed *3/8/2019*, Complaint filed *11/28/2018* and Appealed Order / Judgment filed *2/11/2019*. Court Reporter: *N/A*. *Fee Status: Paid on 3/8/2019 in the amount of \$505.00* (Attachments: # <a href="#">1</a> Appeal Information) (Hellings, J) (Entered: 03/11/2019)
03/13/2019	<a href="#">29</a>	NOTICE of APPEAL by WP Company LLC, dba The Washington Post. (Filing fee \$ 505, receipt number 0972-8158585) (Carolan, Duffy) (Entered: 03/13/2019)
03/14/2019	<a href="#">30</a>	APPEAL PROCESSED to Ninth Circuit re <a href="#">29</a> Notice of Appeal filed by WP Company LLC, dba The Washington Post. Notice of Appeal filed *3/13/2019*, Complaint filed *11/28/2018* and Appealed Order / Judgment filed

		*2/11/2019*. ** *Fee Status: Paid on 3/13/2019 in the amount of \$505.00* (Attachments: # <a href="#">1</a> Appeal Information) (Gonzalez, R) (Entered: 03/14/2019)
03/15/2019	<a href="#">31</a>	USCA CASE NUMBER 19-15472 for <a href="#">27</a> Notice of Appeal, filed by Electronic Frontier Foundation, American Civil Liberties Union Foundation, Riana Pfefferkorn, American Civil Liberties Union of Northern California. (Jessen, A) (Entered: 03/15/2019)
04/15/2019	<a href="#">32</a>	TRANSCRIPT REQUEST by American Civil Liberties Union Foundation, American Civil Liberties Union of Northern California, Electronic Frontier Foundation, Riana Pfefferkorn for proceedings held on August 14, 2018 before Judge sealed. Court Reporter ECRO Fresno. (Granick, Jennifer) (Entered: 04/15/2019)
04/16/2019	<a href="#">33</a>	Transcript Request <a href="#">32</a> CANCELLED. Unable to fulfill order at this time. (Rosales, O.) (Entered: 04/16/2019)
04/25/2019	<a href="#">34</a>	MOTION Motion to Confirm that Certain Sealed Materials are Part of the Record on Appeal by U.S. Department of Justice. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Proposed Order)(Sanchez, Kimberly) (Entered: 04/25/2019)
05/03/2019	<a href="#">35</a>	ORDER on <a href="#">34</a> Motion to Confirm that Certain Documents are Part of the Record of Appeal signed by Chief Judge Lawrence J. O'Neill on 05/03/2019. (Flores, E) (Entered: 05/03/2019)

<b>PACER Service Center</b>			
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05/29/2019 09:28:36			
<b>PACER Login:</b>	caroland:4395973:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:18-mc-00057-LJO-EPG
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30

## CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: June 12, 2019

JASSY VICK CAROLAN LLP

/s/ Duffy Carolan  
Duffy Carolan

*Attorneys for Appellant/Movant WP  
Company LLC, dba The Washington Post*